[illegible] 5 / 1869

Case submitted

Jus Clifford

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

~~No. 131.~~ ~~[illegible]~~

No ~~[illegible]~~

THE BURLINGTON AND MISSOURI RAILROAD COMPANY, PLAINTIFF IN ERROR.

40

VS.

FREMONT COUNTY, IOWA.

[illegible]

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

not to be argued [illegible]

FILED DECEMBER 7, 1867.

Affirmed — Jany 27/1870

Jany 28 1870

Jus Nelson

SUPREME COURT OF THE UNITED STATES.

No. 181.

THE BURLINGTON AND MISSOURI RAILROAD COMPANY,
PLAINTIFF IN ERROR,

VS.

FREMONT COUNTY, IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

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1 STATE OF IOWA, *Fremont County:*

Pleas before the District Court of Iowa, at a term begun and holden in the county of Fremont, on the third Monday in February, A. D. 1865, before the Hon. James G. Day, judge of the third judicial district of the State of Iowa.

Filed Oct. 11, 1864: N. A. Talcott, clerk; J. L. Mitchell, deputy.

FREMONT COUNTY *vs.* THE BURLINGTON AND MISSOURI River Railroad Company.	In chancery.

Be it remembered that heretofore, on the eleventh day of October, A. D. 1864, petition was filed in the office of the clerk of the District Court in and for the county of Fremont, in the words and figures following, to wit:

In District Court of Fremont county, February term, 1865.

Petition.

FREMONT COUNTY
vs.
THE BURLINGTON AND MISSOURI
River Railroad Company.

2 To the District Court of Fremont county, Iowa, in chancery sitting:

Your petitioner, the county of Fremont and State of Iowa, respectully represents; That by virtue of an act of Congress approved September 28th, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp land within their limits," and by virtue of an act of the general assembly of the State of Iowa, entitled "An act to dispose of the swamp and overflowed lands within this State, and to pay the expenses of selecting and surveying the same," passed January, 1853, and other acts of the said general assembly supplemental thereto; and by virtue of an act of Congress entitled "An act to confirm to the several States the swamp and overflowed lands selected under the act of September twenty-eighth, eighteen hundred and fifty, and the act of 2d of March, eighteen hundred and forty-nine," approved March 3d, 1857, your petitioner became the owner of the several tracts of land hereinafter specified and more particularly described in the list hereunto
3 attached and made a part of this petition.

Your petitioner further says that said lands were duly and legally selected and returned as, and are swamp and overflowed lands, and that by virtue thereof, and the several acts of Congress and the general assembly aforesaid, your petitioner became the owner of said lands, and entitled thereto in fee simple, and to the full, free, and uninterrupted use, possession, and enjoyment of the same.

2nd. Your petitioner further states, that relying in good faith
upon her right to said land acquired as aforesaid, your petitioner
contracted to sell to various persons, citizens of said county and
State, a large part, to wit, nearly all of said tracts of lands, for the
purpose of carrying out the provisions of the acts aforesaid, and that
she received from the numerous purchasers of said lands various and
large sums of money in part payment therefor, and expended the
same in draining and reclaiming the swamp and overflowed lands in
said county, granted and confirmed to said county by the acts aforesaid,
of which lands the tracts in controversy constitute a part,
4 and that for the purpose aforesaid said county has expended
a large sum of money, to wit, one hundred thousand dollars,
and by means thereof a large amount of the lands in controversy,
which were swampy and unfit for cultivation, have been reclaimed
and made tillable land, and that in many instances the purchasers
have settled upon the lands purchased of the county as aforesaid, and
made improvements thereon, and are still living on and cultivating
the same. Your petitioner further represents that said defendant,
"The Burlington and Missouri Railroad Company," claims title to
said lands, and assumes and pretends to own the same by virtue of
an act of Congress entitled "A bill making a grant of lands to the
State of Iowa in alternate sections, to aid in the construction of certain
railroads in said State," approved 15th of May, 1856, and certain
acts of the general assembly of the State of Iowa, as lands
granted to said company to aid in the construction of a railroad from
Burlington, on the Mississippi river, to a point on the Missouri river
near the mouth of the Platte river; and that said company denies
5 the right of your petitioner to said lands, and to sell the
same, and have been offering to sell, (as your petitioner is informed
and believes,) has contracted for the sale of some of said
lands, and has by its agents notified the various purchasers of said
lands from your petitioner not to cut timber on, or in any manner
use, said land, all of which several acts of said defendant are in violation
of the rights of your petitioner, and those who purchased and
claim said lands under her by virtue of the acts aforesaid.

Your petitioner avers that said lands were granted to, and the right thereto vested in her, by reason of the several acts first hereinbefore mentioned, and were not subject to the said acts of Congress of May 15th, 1856, or other acts under which the defendant's claim, having been previously disposed of by the United States as aforesaid, and withdrawn from market and from the operation of said R. R. grant, and was not therein included.

Your petitioner further avers that said defendant, the
6 "B. & M. R. R. R.," have failed, in every particular, to comply
with the conditions of the said acts of Congress and the
said general assembly, by virtue of which they claim said lands;
that they have failed to build, construct, complete and equip said
road in the time and manner required; and that the State of Iowa
did not, by her agent, select and return said land to the General
Land Office legally and in the time and manner to give her any

right thereto under said railroad grant, and that therefore said defendant has no legal right, title, nor interest to, nor in said lands; and that if the Commissioner of the General Land Office has certified or approved said lands to the State of Iowa under said act of Congress of May 15th, 1856, or approved or certified the same to said railroad company, the same was done in violation of the rights of plaintiff, and without authority of law.

Your petitioner prays that inasmuch as the acts of said defendant in the premises are contrary to equity and good conscience, and
in violation and fraud of plaintiff's rights, and inasmuch as
7 she cannot have adequate relief in a court of law, this court
may hear this her cause in chancery and render a decree fully
and completely setting and decreeing the right and title in fee simple in said land, and every part and parcel thereof, to be in said Fremont county, and all claim thereto by defendant, and all persons claiming under them, be declared and decreed void and held for nought.

And petitioner further prays for such other and further relief in the premises as to this honorable court she may seem justly entitled, and for costs of suit.

J. A. HARVEY,
Att'y for Plaintiff.

---

8 *List of lands refered to in the foregoing petition.*

Parts of section.	Sec.	Town.	R'ng.	Acres.
SE qr and SE qr of NE qr and SE qr of SW	27	70	40	240
SE qr of NE qr and S half of SW qr	5	69	do	120
SW qr of SE qr and N half of SE qr	do	do	do	do
N half of NW and SW qr of SW qr	7	do	do	207.53
N half of NE qr	do	do	do	
SE qr and E half of NE qr	1	70	40	239.94
W half sec and SW qr of NE qr	13	do	do	360
NE qr and W half of SE qr and E half of SW qr.	23	do	do	320
SE qr and SE qr of SW qr and S half of NE qr	33	do	do	280
				1,887.47
Whole of section	5	69	41	626.80
SE qr of NE qr and NE qr of SE qr	7	do	do	80
SW qr of NW qr and S half of NE qr; NE qr of NE qr and S half of section	9	do	do	80
S half of sec and S half of NE qr and S half of NW qr	11	do	do	480
NW qr and W half of SW qr	3	70	41	234.83
E half of sec, SW qr, and N half of NW qr	5	70	43	531.48
E half of NE qr and E half of SE qr	7	do	do	160
Whole of section	9	do	do	640
NW qr of NW qr	15	do	do	40
E half sec, NW qr, W half of SW qr, and NE of SW qr	17	do	do	600
E half of SE qr and SW qr of SE qr	19	do	do	120
E half of section	21	do	do	320
W half of NW qr	27	do	do	80
W half sec, W half of NE qr and W half of SE qr	29	do	do	480
E half of NE qr, and E half of SE qr, and SW qr of SE qr	31	do	do	200
S half SE qr, W half SW qr, and SE qr of SW qr	33	do	do	200
				5,273.11
W half of NE qr and E half NW qr	3	69	43	145.42
9 E half sec, E half SW qr, and SW qr NW qr	5	69	43	429.30
Lot 3 and 4, and SW qr SE qr, and E half SE qr	5	70	43	220.25
W half of section	3	70	43	310.45
NE qr of NE qr and lot No. 1	5	do	do	82.20
S half of section	9	do	do	320
E half of NE qr and SW qr of NE qr	9	do	do	120
SE qr of NW qr and W half of NW qr	9	do	do	120
W half of section	11	do	do	320
S half sec, S half of NE qr, and S half of NW qr	15	do	do	480
NW qr	17	do	do	160
SW qr of NE qr and SE qr	17	do	do	200
E half SW qr and NW qr SW qr	17	do	do	120
Lots Nos. 1, 2, 3, and 4, and E half of SW qr	19	do	do	246.76
NW qr and E half NE qr, and SE qr	21	do	do	400
N half sec, S half of SE qr, and S half SW qr.	27	do	do	480
E half sec, W half NW qr, W half SW qr	29	do	do	480
S half sec, E half NE qr, and NE qr NW qr	31	do	do	399.53
W half sec, SE qr and W half of NE qr	33	do	do	560
				5,593.91
Total	----	----	----	12,754.49

Endorsed: Filed October 11th, 1864. N. A. Talcott, clerk, per J. A. Mitchell, deputy.

10 And afterwards, to wit, on the 15th day of January, 1865, there was filed in the office of the said clerk a notice, in the words and figures following, to wit:

Original notice.

To the Burlington and Missouri River Railroad Company:

You are hereby notified that there is now on file in the office of the clerk of the District Court of Fremont county, Iowa, a petition in chancery of said Fremont county, claiming title to certain lands described in said petition, amounting to about 12,753 95-100 acres, as swamp and overflowed lands, under act of Congress of September 28th, 1850, and other acts, (to which said lands you claim title,) and praying for a decree settling the title thereto to be in said county, &c., and that unless you appear and answer said petition by noon of the second day of the next term of said court, to be begun and holden at the court-house in Sidney, in said county, on the 3d Monday in February, 1865, a default will be entered and a decree entered as prayed for in said petition.

J. A. HARVEY,
Att'ys for Plaintiff.

[Internal revenue, fifty cents.]
Fremont county, by J. A. H. Dec. 15, 1864.

11 Upon which was a return, as follows, to wit:

STATE OF IOWA, *Des Moines Co.*, *ss*;

I received this notice January 5th, 1865, and on January 6th, 1865, I served this notice on the Burlington and Missouri River Railroad Company, by reading the same to C. E. Jerkins, acting sup't of said company, in the city of Burlington, Iowa, and delivered to him a true copy of the same, and who demanded that a copy of the petition in this cause be mailed to him at Burlington.

My fees, 86 cents, p'd by plaintiff.

M. HEISEY,
Sheriff Des Moines Co., Iowa.

Be it remembered, that at a regular trial term of the District Court of Fremont county, Iowa, begun and holden at the court-house in Sidney, in said county, on the 3d Monday in February, 1865, the following, among other proceedings, were had, to wit:

Record entries.—4th day of term.—Continuance.

FEBRUARY 23d, 1866.

FREMONT COUNTY
vs.
THE B. & M. R. R. R. Co. } No. 126.

12 Now, at this time, this cause being called, and it appearing to the satisfaction of the court that the defendant herein was not duly notified of the commencement of this cause more than sixty

days prior to the commencement of this present term of this court, it is therefore ordered by the court that this cause stand continued generally.

And afterward, to wit, on the 5th day of April, 1865, plaintiff filed a motion for a default in the words and figures following, to wit:

In the District Court of Fremont county, Iowa.—Aug. term, 1865.

Motion for default.

FREMONT COUNTY
vs.
THE BURLINGTON AND MISSOURI RIVER RAILroad Company.

Now comes the plaintiff, by her attorneys, and claims a default herein for want of an answer.

J. H. HARVEY,
And ROB'T PERCIVAL,
Atty's for Plaintiff.

Endorsed: Filed April 5th, 1865. J. L. Mitchell, clerk.

13 And afterward, to wit, on the 21st day April, 1865, the defendant, by attorney, D. Rorer, filed an answer in the words and figures following, to wit:

In the District Court of Fremont county, in the State of Iowa.

1*st answer.*

THE COUNTY OF FREMONT, pl'ff,
vs.
THE BURLINGTON AND MISSOURI RIVER Railroad Company, def'ts.
In chancery.—Equitable proceeding.

The defendant, reserving the benefits of all causes of demurrer in plaintiff's petition, shown for answer, says:

1st. This defendant denies the truth of each and every allegation in plaintiff's petition contained, and denies that either of such allegations are true, except as defendants shall express admit to be so by this answer.

2nd. Defendant admits that defendant claims to be the owner of said lands in trust, to aid in the construction of said railroad.

3d. This defendant avers and states this defendant so owns said lands, under and by virtue of said act of Congress of 15th 14 May, 1856, making said railroad grants refered to in plaintiff's petition, and in the several acts of Congress subsequent in reference thereto; and also of the several acts of the general assembly of the State of Iowa in relation to the disposal of a part of the lands so granted by Congress; and moreover, avers and states that the lands described in plaintiff's petition were regularly and legally listed and set off, and certified to this defendant by the United States, by and through the Department of the Interior, and the Commissioner of the General Land Office, which lists will be produced in evidence on the trial of this cause, and a copy thereof will previously be in due time filed in this cause.

DAVID RORER,
Att'y for Burlington and Missouri River Railroad Company.

Endorsed: Filed April 21st, 1865. J. L. Mitchell, clerk.

And on the 1st day of September, 1865, there was filed the following answer, to wit:

In the District Court of Fremont county.

15 *2nd answer.*

FREMONT COUNTY, pl'ff,
vs.
THE BURLINGTON AND MISSOURI RAILROAD Company, def't.
} In chancery.—Equitable proceedings.

STATE OF IOWA, *ss*:

Now comes the defendants, the Burlington and Missouri River Rail River Company, and reserving all advantage of cause of demurrer to plaintiff's petition for answer thereto, says:

1st. This defendant denies the truth of each and every one of the allegations and statements in plaintiff's petition contained.

2nd. Defendant denies that complainant is the owner of, or possessed of, the legal or equitable title to the several tracts of land, or of any of them, described in plaintiff's petition, as in said petition alleged, or in any manner whatsoever. This defendant denies that said lands, or any part of them, are swamp lands, or were liable to inure to plaintiff as such, and denies that they, or any part thereof, were selected under and in accordance with said act of Congress and legislative acts, as in said petition is alleged; denies that any
16 such selection was ever made or returned, as is by law required; denies that such lists or selection of land was ever confirmed by act of Congress, as is in said petition alleged.

3d. Defendant admits that defendant claims to own all the lands in said petition described by virtue of said congressional act of the 15th of May, 1856, and the act of the general assembly of the State of Iowa, in plaintiff's petition refered to by the title thereby confered, and confered by the said lands being set off to this defendant by the proper department of the United States government, as hereinafter stated.

4th. This defendant has no knowledge or information, nor means of information, nor any belief, nor grounds of belief, as to the truth of the allegations that plaintiff has contract to sell a part of said lands; therefore, does not admit, but denies the truth thereof, and in that respect leaves the plaintiff, if that fact be material, to his proof.

5th. It is true that defendant has offered certain tracts of said lands for sale, and has sold some of the same, as defendant had good right to do.

6th. Defendant avers and states that by an act of the Congress of the United States entitled a bill respecting a grant of lands
17 to the State of Iowa, in alternate sections to aid in the con-
struction of a certain railroad in said State, approved May 15th, 1856, there was granted to the State of Iowa for the purpose of aiding in the construction of a railroad from Burlington, on the Mississippi river, to a point on the Missouri river, near the mouth of the Platte river, certain lands of the United States, and that the general assembly of the State of Iowa, by an act entitled "An act to accept the grant and carry into execution the trust confered upon the State of Iowa, in alternate sections to aid in the construction of railroads in the State of Iowa," approved July, 1856, granted to this defendant so much and all of the said lands and of the rights, powers, interest and privileges as were or might be granted or confered on said State by said act of Congress to be holden in like trust by this defendant, and to aid in the construction of said railroad from said Burlington to said point on the Missouri river, near the mouth of the Platte river, which grant was thereafter accepted by said defendant, on the 3d day of September, 1856, as will appear by
18 reference to Exhibit No. 1, here annexed, and that in and by
said act of said general assembly, this defendant is expressly recognized as a corporate body created and existing under the laws of Iowa, and as the company and corporate body contemplated by said act of Congress as the beneficiaries thereof. This defendant further avers and states that the lands in said complainant's bill and exhibits described are a part of the lands so granted by act of Congress and by legislative grant of the State of Iowa, as hereinafter stated, to aid in the construction of said railroad from said Burlington to the Missouri river as aforesaid, and as such have been and are listed and set off, certified and approved to this defendant on and under the dates of the several exhibits of copies of such lists and certificates of approval here annexed as part of this answer, and which are on file in the case of Mills county against this defendant now under advisement before the judge of this court, who is also judge of the District Court of Mills county, the original of which will be procured and read in evidence on the trial of this cause, which lists and certicates aforesaid confer on this defendant, as in equity and good
19 conscience they ought to do, legal title to said lands, and un-
der and by virtue of which this defendant makes title to said lands, and claims to hold and own the same, and claims the right so to do on the terms of, and to the extent of said grants or congressional and legislation acts and for the purposes and objects therein specified, wherefore this defendant denies that the plaintiffs on petitioner has the legal title to said lands, and says that this defendant has the better title both legal and equitable thereto.

7th. This defendant denies that this defendant has failed to perform and do that which by the terms of said grant was devolved on this defendant to do, and denies that this defendant has in any manner made default in that respect, and also denies that the question of such performance or default is pertinent or material to this cause. This defendant denies that said lands had been previously disposed of and withdrawn from market by the United States as in the petition of plaintiff is alleged. This defendant denies that large sums or any sum or sums of money have been expended by plaintiff
20 in reclaiming said lands as swamp lands, and denies the materiality of the allegation of plaintiff in that respect; also denies that any part of said lands have been by the defendant reclaimed as is alleged, or that the same have been in any manner improved.

8th. This defendant says said lands were and are subject to said railroad grant, and that so much of the petition as avers they were not so subject is untrue in point of fact, and also avers that said lands were selected by agents and returned to the General Land Office as fully as required by law to be, and in due and ample time and manner to give right and title to the same to this defendant.

9th. Defendant denies that said lands were certified to this defendant, and so approved by the General Land Office or Interior Department in violation of the rights of plaintiff or without authority of law.

10th. Defendant avers that said railroad and the line and tract thereof were actually surveyed and marked out on the ground as the permanent route thereof, through the county of Mills in said State of Iowa, between the 9th day of October, 1856, and the 15th
21 day of October, 1856, by the line and route laid down on the platt thereof, and of the adjacent lands, which plat is as one exhibit on file in this cause and in the cause of Mills county refered to in agreement on file and as a part of this answer and evidence in the case, together with all the writings, figures, illustrations, localities and dates thereon entered and laid down, all of which defendant avers are true and correct, in point of fact, the platt being an authenticated copy of the one returned and filed as required by law. That thereafter to wit, on the 24th day of March, 1857, the said line and tract and location of said railroad was by said defendant formerly adopted as the permanent line of said railroad through said county of Mills, which act of adoption and location when so made refered back by relation in law to the said date of survey and markings of the several sections laid down on said platt in said Mills county, as designated by the flags on said platt.

11th. This defendant denies the right of the plaintiff to the relief sought, and prays to be hence dismissed with his costs, and that plaintiff's petition be dismissed.

DAVID RORER,
Atty. and Solicitor for Defendant.

Endorsed: Sept. 1st, 1865. J. L. Mitchell, clerk.

22 And on the 1st day of September, 1865, there was filed a replication in words and figures following, to wit:

FREMONT COUNTY
vs.
BURLINGTON AND MISSOURI RIVER
Railroad Co.

Dist. Court Fremont co., Iowa —August term, 1865.

Replication.

Comes now said plaintiff by her attorney, and for replication to the answer of the defendant, (and reserving all advantage of all causes of demurrer thereto,) denies each and every material affirmative allegation therein contained which is not admitted or alleged in her petition in this cause.

And she expressly denies that defendnnt is the corporate body contemplated by said act of Congress of May 15th, 1856, and denies that said act contemplated any such body, and denies that said act of the general assembly expressly recognized defendant as the corporation contemplated by said act of Congress. And she denies that the lands in controversy were granted by or included in said railroad grant. And denies that said lands have been listed, set off,
23 and approved to said defendant as alleged in said answer.
And denies that said lists refered to in said answer confer on said defendant any title whatsoever, either legal or equitable; and denies that defendant has any title or is in any manner entitled to said lands or any part thereof.

And she denies that the line, track, or route of said railroad was actually surveyed and marked out and staked off through the county of Mills between the 9th and 15th days of October, 1856, and expressly denies that the formal adoption of said line or track by defendant on the 24th day of March, 1857, refered back by relation in law to the date of said survey, as alleged in said answer. And she expressly denies that said line was ever permanently established or "definitely fixed" prior to said 24th day of March, 1857.

And plaintiff denies each and every other affirmative allegation in said answer contrary to or inconsistent with her petition. She still abides by her petition, and prays as she has already therein prayed.

J. A. HARVEY, *Atty. for Pl'ff.*

24 STATE OF IOWA, *Fremont County:*

Be it remembered that at a regular trial term of District Court of Iowa, in and for the county of Fremont, begun and held at the courthouse in said county on Monday, the 28th day of August, 1865, the following amongst other proceedings were had and done, to wit:

In the District Court of Fremont county, Aug. term, 1865.—Fifth day of term.—September 1st, 1865.

Agreement as to admission of evidence.

FREMONT COUNTY
vs.
BURLINGTON AND MISSOURI RIVER
Railroad Company.
} Chancery.

Now comes the parties, plaintiff by J. H. Harvey and the defendant by D. Rorer, respective attorneys, and by consent and agreement of the said respective counselor attorneys, it is agreed and ordered that the default heretofore granted in this cause be set aside, and that defendant answer plaintiff's petition instanter, that the same exhibits, (whether copies or original,) and also all documentary evidence of title and all depositions which were filed in and which are in
25 evidence in the case of Mills county *vs.* The Burlington and Missouri River Railroad Company, be considered as filed as exhibits and as given in evidence in this cause, the said Mills county case being now under advisement and consideration for decision before the same judge who presides and holds this court; and it is also agreed that each party may give in evidence any documents and depositions taken and prepared for this case and not in evidence in the Mills county case; all such evidence, exhibits, &c., hereinbefore refered to and which is agreed may be introduced in evidence in this cause, to go as they did in the Mills county case, for what it is worth, and subject to all motions, objections, and exceptions that may be shown against them.

But in using such documentary evidence and depositions all such parts are to be considered in evidence in this case which may relevant to the issue, though not relevant or directly relating to the issue in theMills county case, (such as descriptions of lands, &c.)

It is further agreed and ordered that when this case goes to the Supreme Court of this State, all such exhibits and evidence
26 shall be used then as herein above agreed to be used here in this court; and so likewise in the Supreme Court of the United States, if this cause is taken there and for that purpose, duly attested copies of said evidence used in the Mills county case may be taken and used instead of the original as hereinabove agreed and ordered in said higher courts if this cause is taken thereto. Also after reading and using in evidence the originals of such documentary evidence and deposition, either party may withdraw the same, the judge of this court having identified and marked the same as in evidence, and take them away for safe keeping, with privilege of reproducing and using the same again in the said Supreme Court or either of them, in case this case is taken thereto, to include the original certificates or lists of lands made and delivered to the defendant by the government of the United States, or office exemplifications thereof.

And also that said defendant may have the right to introduce and to use as evidence in this cause in any of the said courts any original lists or office exemplifications thereof from the United States 27 government to the defendant, including any of the lands in controversy in this suit, whether copies be attached to the answer as exhibits or not, the same to go subject to all and for what they may be worth.

Sept. 1st, 1865.

J. A. HARVEY, *Att'y for Pl'ff.*
D. RORER, *Att'y for Def't.*

And thereupon defendant files his answer to plaintiff's petition herein.

Defendant's agreement as to submission and am'dm't.

FREMONT COUNTY
vs.
BURLINGTON AND MISSOURI RIVER RAILROAD Company. } Equitable proceedings.

This cause is to be submitted to the court to be decided on written briefs and arguments. Mr. Harvey's for plaintiff to be furnished to Mr. Rorer, attorney for defendant within twenty-six days by mail. Mr. Rorer's reply (brief and argument, if he wishes to make any) within ten days to be mailed in the same or like manner to Mr. Harvey. Mr. Harvey will then hand both to the judge, together 28 with Mr. Harvey's conclusion or concluding remarks, and the case will then be ready for decision, the decision to be entered as of this term.

I consent that Mr. Harvey may interline by inserting the words, "and are" before the word swamp in the fifth line on the second page in the petition in the case of Fremont County *vs.* B. & M. R. R. R. Co.

Sept. 1st, 1865.

D. RORER.

Decree.

STATE OF IOWA
vs.
THE BURLINGTON AND MISSOURI RIVER RAILroad Company. } Ninth day of term, Sept. 6th, 1865.

Now at this time this cause coming on to be heard, and the court having heard and examined the allegations of the parties, the evidence submitted, and the arguments of counsel, and being fully advised in the premises, finds the facts stated in the petition to be true, and that the plaintiff is entitled to the relief therein prayed for.

It is therefore ordered, adjudged, and decreed by the court that the title in fee simple to the land described in the plaintiff's 29 petition to wit: The S.E. qr. of the N.E. qr., S. half of S.W. qr., S.W. qr. of the S.E. qr., and the N. half

of the S.E. qr. of sect. five. The north half of the N.E. qr., N.
half of N.W. qr., and the S.W. qr. of the S.W. qr. of sect. seven
in township No. sixty-nine, (69,) north of range, No. forty (40) west.
And the east half of the N.E. qr., and the S.E. qr. of sect. one; the
S.W. qr. of the N.E. qr., and the west half of sect. thirteen; the
N.E. qr., the E. half of the S.W. qr., and the west half of the south-
east qr. of section twenty-three; the S.E. qr. of the N.E. qr., the
S.E. qr. of the S.W. qr., and the S.E. qr. of section twenty-seven;
the S. half of the N.E. qr., the S.E. qr. of the S.W. qr., and the
S.E. qr. of sect. thirty-three (33) in township No. seventy, (70,)
north of range forty (40) west, and the whole of sect. five; the S.E.
qr. of the N.E. qr., and the N.E. qr. of the S.E. qr. of section
seven; the N.E. qr. of the N.E. qr., the S. half of the N.E. qr., the
S.W. qr. of the N.W. qr., and the S. half of sect. nine (9); the S.
half of the N.E. qr., the S. half of the N.W. qr., and the S. half of
sect. eleven in township No. sixty-nine, (69,) north of range forty-
one (41) west, and the N.W. qr., and the W. half of the S.W. qr. of
sect. three; the E. half, the N. half of the N.W. qr., and the S.W.
qr. of sect. five; the E half of the N.E. qr., and the E. half of the
S.E. qr. of sect. seven. The whole of sect. nine, (9,) the N.W. qr.
of the N.W. qr. of sect. fifteen; the E. half, the N.W. qr.,
30 the W. half of the S.W. qr., and the N.E. qr. of the S.W. qr.
of section seventeen; the E. half of the S.E. qr., and the S.
W. qr., the S.E. qr. of sect. nineteen. The E. half of sect. (21)
twenty-one, the W. half of the N.W. qr. of sect. twenty-seven· the
W. half of the N.E. qr., the W. half of the S.E. qr., and the W.
half of section twenty-nine. The E. half of the NE. qr., the E. half,
of the S.E. half, and the W. half of the S.E. qr. of sect. thirty-one
(31.) The W. half of the S.W. qr., the S.E. qr. of the S.W. qr., and
the S. half of the S.E. qr. of sect. thirty-three in township No.
seventy, (70,) north of range forty-one (41) west, and the W. half
of the N.E. qr., and the E. half of the N.W. qr. of sect. three, and
the E. half, the S.W. qr. of the N.W. qr., and the E. half of the S.
W. qr. of sect. five in township No. sixty-nine, (69,) north of range
No. forty-three (43) west, and the W. half of sect. three; the N.E.
qr. of the N.E. qr., and lots No. one, three, and four, the S.W. qr.
of the S.E. qr., and the E. half of the S.E. qr. of sect. five; the E.
half of the N.E. qr., the S.W. qr. of the N.E. qr., the W. half of
the N. W. qr., the S.E. qr. of the N.W. qr., and the S. half of sect.
nine. The W. half of sect. eleven; the S. half of the N.E. qr., the
S. half of the N.W. qr., and the S. half of sect. fifteen; the S.W.
of the N.E. qr., the N.W. qr., the E. half of the S.W. qr., the N.W.
qr. of the S.W. qr., and the S.E. qr. of sect. seventeen; the E. half
of the S.W. qr., and lots No. one, two, three, and four in sect. nine-
teen; the E. half of the N.E. qr., the N.W. qr., and S.E. qr. of sect.
twenty-one; the N. half, the S. half of the S.W. qr., and the
31 S. half of the S.E. qr. of section twenty-seven; the E. half,
the W. half of the N.W. qr., and the W. half of the S.W. qr.
of section twenty-nine; the E. half of the N.E. qr., the N.E. qr. of
the N.W. qr., and S. half of section thirty-one; the W. half of the

N.E. qr., the W. half, and the S.E. qr. of section thirty-three in township No. seventy, (70,) north of range forty-three (43) west of the fifth principal meridian, containing in the aggregate twelve thousand seven hundred and fifty-four and 49-100 (12,754 49-100) acres, and every part and parcel thereof is legally vested in the plaintiff, and it is adjudged and decreed by the court that the said plaintiff, to wit, Fremont county, is the owner in fee simple of said lands, and is entitled to the uninterrupted control, use, benefit, and enjoyment of the same, and it is further adjudged and decreed that the claim of the defendant, to wit, the Burlington and Missouri River Railroad Company, to said lands, and to each and every parcel thereof is illegal, null, and void, and it is further adjudged that the defendant pay the cost of this suit taxed at dollars, and that execution issue therefor.

Read, approved, and signed Feb'y 19th, 1866.

JAMES G. DAY, *Judge.*

32 And on the 28th of February, 1866, there was filed the following notice, to wit:

Notice of appeal.

In District Court of said county.

FREMONT COUNTY, plaintiff,
vs.
THE BURLINGTON AND MISSOURI RAILROAD COMPANY, def'ts.
} Equitable proceeding.

STATE OF IOWA, *Fremont County*:

Decree in favor of pl'ff.

To clerk of the District Court of Fremont county, and to J. A. Harvey, the attorney for plaintiff in the above-entitled cause:

You are hereby notified that the defendant appeals, in this case, from the decision and final decree of said District Court to the Supreme Court of the State of Iowa. You the said clerk will please send up a full transcript of all the recorded entries and files, except the depositions and other papers, documents and map used in evidence, of which send up the original.

Feb'y 6th, 1866.

DAVID RORER,
Att'y for Defendant.

33 On the back of which notice was the following:

DES MOINES, *February 8th*, 1866.

I hereby acknowledge due and legal service of the within notice on me, attorney for plaintiff, this day.

J. H. HARVEY.

SIDNEY IOWA, *Feb'y 28th*, 1866.

The within notice served on me on this day, and filed by me as clerk of said court.

J. L. MITCHELL, *Clerk.*

34 *The original list of swamp and overflowed lands in Fremont county, Iowa.*

(1st list certified from surveyor general.)

OFFICE OF SEC'Y OF STATE,
Iowa City, June 7th, 1854.

General WARNER LEWIS, *Surveyor General of Iowa and Wisconsin*:

SIR: I herewith report the following list of swamp and overflowed lands lying in the county of Fremont, State of Iowa, selected and reported to this office in accordance with law.

Very resp't'y, your obed't serv't,

GEO. W. McCLEARY,
Sec'y of State.

35 *List of "swamp and overflowed lands" lying in the county of Fremont in the State of Iowa, selected and returned by Benjamin Rector, selecting agent of said county under the authority of the County Court of said county, and according to an act of the general assembly of the State of Iowa, approved January 13th, 1853.*

Parts of section.	Sec.	Town.	Rn'g.	Area.	Remarks.
			W.		
36 NE fr qr of NE qr	1	70	40	39.94	More than half marsh.
SE qr of NE qr	1	70	40	40.00	Marsh.
SE qr	1	70	40	160.00	do
NE qr	12	70	40	160.00	do
SW qr of NW qr	12	70	40	40.00	do
SE qr	12	70	40	160.00	do
SW qr	12	70	40	160.00	do
SW qr of NE qr	13	70	40	40.00	do
NW qr	13	70	40	160.00	do
SW qr	13	70	40	160.00	do
NW qr of NW qr	24	70	40	40.00	do
NE qr	23	70	40	160.00	do
W half of SE qr	23	70	40	80.00	do
E half of SW qr	23	70	40	80.00	do
W half of NE qr	26	70	40	80.00	do
NW qr	26	70	40	160.00	do
SE qr of NE qr	27	70	40	40.00	do
N half of SW qr	26	70	40	80.00	do
SW qr of SW qr	26	70	40	40.00	do
SE qr	27	70	40	160.00	do
SE qr of SW qr	27	70	40	40.00	do
N half of NE qr	34	70	40	80.00	do
SW qr. of NE qr	34	70	40	40.00	do
NW qr	34	70	40	160.00	do
NW qr of SW qr	34	70	40	40.00	do
S half of NE qr	33	70	40	80.00	do
SE qr	33	70	40	160.00	do
SE qr of SW qr	33	70	40	40.00	do
					do
				2,679.00	do
NW qr of fr	3	70	41	154.83	do
W half of SW qr	3	70	41	80.00	do
37 NE fr qr of NE qr	4	70	41	37.40	Overflows to the depth of 4 feet.
NW fr qr of NE qr	4	70	41	37.45	Same. Same.
S half of NE qr	4	70	41	80.00	Same. Same.
Fr NE qr of NW qr	4	70	41	37.50	Same. Same.
Fr NW qr of NW qr	4	70	41	37.55	Same. Seme.
S half of NW qr	4	70	41	80.00	Same. Same.
SE qr	4	70	41	160.00	Same. Same.
SW qr	4	70	41	160,00	Same. Same.
Fr NE of NE qr	5	70	41	37.03	Same. Same.
Fr NW qr of NE qr	5	70	41	35.92	Same. Same.
S half of NE qr	5	70	41	80.00	Same. Same.
NE qr of NW qr	5	70	41	34.82	Same. Same.
NW qr of NW qr	5	70	41	33.71	Same. Same.
S half of NW qr	5	70	41	80.00	Same. Same.
SE qr	5	70	41	160.00	Same. Same.
SW qr	5	70	41	160.00	Same. Same.
Fr NE qr of NE qr	6	70	41	33.94	Same. Same.
E half of SE qr	6	70	41	80.00	Same. Same.
W half of NW qr	10	70	41	80.00	Marsh. Marsh.
SE qr of NW qr	10	70	41	40.00	Same. Same.

List of swamp and overflowed lands, &c.—Continued.

Parts of section.	Sec.	Town.	R'ng.	Area.	Remarks.
			W.		
SW qr of NE qr	10	70	41	40.00	Same. Same.
W half of SE qr	10	70	41	80.00	Same. Same.
SW qr	10	70	41	160.00	Same. Same.
All of	9	70	41	640.00	Part marsh, the balance overflow to the depth of 3 feet.
All of	8	70	41	640.00	Overflow to the depth of 3 feet.
E half of NE qr	7	70	41	80.00	do do
E half of SE qr	7	70	41	80.00	do do
				3,552.15	
38 NW qr of NW qr	15	70	41	40.00	Marsh.
All of	17	70	41	640.00	Overflow to the depth of 3 feet.
SE qr of NE qr	18	70	41	40.00	Same.
NE qr of SE qr	18	70	41	40.00	Same.
SW qr of SE qr	19	70	41	40.00	Same.
E half of SE qr	19	70	41	80.00	Same.
All of	20	70	41	640.00	Same.
NE qr	31	70	41	160.00	Marsh.
SE qr	21	70	41	160.00	Same.
SW qr of SW qr	22	70	41	40.00	Same.
W half of NW qr	27	70	41	80.00	Same.
NE qr	28	70	41	160.00	Same.
NW qr of SE qr	28	70	41	40.00	Same.
W half of SE qr	29	70	41	80.00	Overflow to the depth of 4 feet.
W half of NE qr	29	70	41	80.00	Same.
NW qr	29	70	41	160.00	Same.
SW qr	29	70	41	160.00	Same.
NE qr	30	70	41	160.00	Same.
SE qr	30	70	41	160.00	Same.
SE qr of SW qr	30	70	41	40.00	Same.
E half of NE qr	31	70	41	80.00	Overflow to the depth of 2 feet.
SW qr of SE qr	31	70	41	40.00	Same.
E half of SE qr	31	70	41	80.00	Same.
NW qr	32	70	41	160.00	Same.
SW qr	32	70	41	160.00	Same.
SW qr of SE qr	32	70	41	40.00	Same.
E half of SE qr	32	70	41	80.00	Same.
W half of SW qr	33	70	41	80.00	Same.
SE qr of SW qr	33	70	41	40.00	Same.
				3,760.00	
39 S half of SE qr	33	70	41	80.00	Overflow to the depth of 2 feet.
N half of NW qr	4	69	40	64.50	Marsh.
SW qr of NW qr	4	69	40	40.00	Same.
SE qr of NE qr	5	69	40	40.00	Same.
NE qr of SE qr	5	69	40	40.00	Same.
W half of SE qr	5	69	40	80.00	Same.
S half of SW qr	5	69	40	80.00	Same.
SE qr of SE qr	6	69	40	40.00	Same.
W half of NW qr	7	69	40	87.53	Same.
NE qr of NW qr	7	69	40	40.00	Same.
N half of NE qr	7	69	40	80.00	Same.

List of swamp and overflowed lands, &c.—Continued.

Parts of section.	Sec.	T'n	R'ge.	Area.	Remarks.
			W.		
N half of NW qr	8	69	40	80.00	Same.
NW qr of NE qr	8	69	40	40.00	Same.
SW qr	12	69	40	160.00	Overflows to the depth of 3 feet.
SE qr of NW qr	12	69	40	40.00	Same.
N half of NE qr	12	69	40	80.00	Same.
SE qr	12	69	40	160.00	Same.
All of	13	69	40	640.00	Same.
E half of NE qr	14	69	40	80.00	Same.
E half of SE qr	14	69	40	80.00	Same.
SW qr of SW qr	22	69	40	40.00	Same.
E half of SW qr	22	69	40	80.00	Same.
S half of NE qr	22	69	40	80.00	Same.
SE qr	22	69	40	160.00	Same.
S half of NW qr	23	69	40	80.00	Same.
SW qr	23	69	40	160.00	Same.
NE qr	23	69	40	160.00	Same.
				2,792.03	
40 SE qr	23	69	40	160.00	Overflows to the depth of 3 feet.
All of	24	69	40	640.00	Same.
W half of NE qr	25	69	40	80.00	Overflows to the depth of 2 feet.
NW qr	25	69	40	160.00	Same.
N half of SW qr	25	69	40	80.00	Same.
N half of NE qr	26	69	40	80.00	Same.
S half of SE qr	26	69	49	80.00	Same.
NW qr	26	69	40	160.00	Same.
NE qr of SW qr	26	69	40	40.00	Same.
W half of SW qr	26	69	40	80.00	Same.
All of	27	69	40	640.00	Same.
S half of NE qr	28	69	40	80.00	Same.
SE qr	28	69	40	160.00	Same.
SW qr	28	69	40	160.00	Same.
S half of NW qr	28	69	40	80.00	Same.
SE qr of NE qr	29	69	40	40.00	Same.
SE qr	29	69	40	160.00	Same.
SW qr	29	69	40	160.00	Same.
S half of NW qr	29	69	40	80.00	Same.
S half of NE qr	30	69	40	80.00	Same.
SE qr	30	99	40	160.00	Same.
W half of SW qr	30	69	40	91.32	Same.
NW qr	31	69	40	171.52	Same.
SW qr	31	69	40	171.84	Same.
W half of SE qr	31	69	40	80.00	Same.
W half of NE qr	31	69	40	80.00	Same.
NE qr of NE qr	31	69	40	40.00	Same.
NW qr	32	69	40	160.00	Same.
NE qr	32	69	40	160.00	Same.
				4,314.68	
41 SE qr	32	69	40	160.00	Overflows to the depth of 3 feet.
NW qr	33	69	40	160.00	Same.
SW qr	33	69	30	160.00	Same.
NE qr	33	69	40	160.00	Same.
W half of SE qr	33	99	40	80.00	Same.

List of swamp and overflowed lands.—Continued.

Parts of section.	Sec.	Town.	R'ge.	Area.	Remarks.
			W.		
NE qr of SE qr	33	69	40	40.00	Overflows to the depth of 3 feet.
NW qr	34	69	40	160.00	Same.
N half of SW qr	34	69	40	80.00	Same.
NE qr	34	69	40	160.00	Same.
N half of SE qr	34	69	40	80.00	Same-
NW qr	35	69	40	160.00	Same.
W half of NE qr	35	69	40	80.00	Same.
Fr NE qr of NE qr	4	69	41	36.42	Same.
Fr NW qr of NE qr	4	60	41	36.48	Same.
S half of NE qr	4	69	41	80.00	Same.
Fr NE qr of NW qr	4	69	41	36.53	Same.
Fr NW qr of NW qr	4	69	41	36.59	Same.
S half of NW qr	4	69	41	80.00	Same.
NW qr of SW qr	4	69	41	40.00	Same.
Fr NE qr of NE qr	5	69	41	36.64	Same.
Fr NW qr of NE qr	5	69	41	36.68	Same.
S half of NE qr	5	69	41	80.00	Same.
SE qr	5	69	41	160.00	Same.
SW qr	5	69	41	160.00	Same.
S half of NW qr	5	69	41	80.00	Same.
Fr NE qr of NW qr	5	69	41	36.72	Same.
Fr NW qr of NW qr	5	69	41	36.76	Same.
Fr NE qr of NE qr	6	69	41	36.97	Same.
Fr NW qr of NE qr	6	69	41	37.35	Same.
				2,527.14	
42 S half of NE qr	6	69	41	80.00	Overflows to depth 4 ft.
SE qr	6	69	41	160.00	Same.
SE qr of NE qr	7	69	41	40.00	Same.
NE qr SE qr	7	69	41	40.00	Same.
All of	8	69	41	640.00	Same.
SW qr of NW qr	9	69	41	40.00	Same
SW qr	9	69	41	160.00	Same.
SE qr	9	69	41	160.00	Same.
SW qr of NE qr	9	69	41	40.00	Same.
E half of NE qr	9	69	41	40.00	Same.
S half of NW qr	10	69	41	80.00	Same.
SW qr	10	69	41	160.00	Same.
S half of NE qr	10	69	41	80.00	Same.
SE qr	10	69	41	160.00	Same.
S half of NW qr	11	69	41	80.00	Same.
SW qr	11	69	41	160.00	Same.
S half of NE qr	11	69	41	40.00	Same.
S E qr	11	66	41	160.00	Same.
NW qr	12	69	41	160.00	Same.
N half of SW qr	12	69	41	80.00	Same-
NE qr	12	69	41	160.00	Same.
NW qr of SE qr	12	69	41	40.00	Same.
NW qr of NW qr	15	69	41	40.00	Same.
All of	17	69	41	640.00	Same.
NE qr	18	69	41	160.00	Same.
SE qr	18	69	41	160.00	Same.
SE qr of NW qr	18	69	41	40.00	Same.
E half of SW qr	18	69	41	80.00	Same.
E half of NW qr	19	69	41	80.00	Same.
				4,040.00	
43 NE qr	19	69	4 W	160.00	Same.

List of swamp and overflowed lands, &c.—Continued.

Parts of section.	Sec.	Town.	R'ge.	Area.	Remarks.
			W.		
SE qr	19	69	41	160.00	Deep swamp.
All of	20	69	41	840.00	Overflows to the depth of 4 feet.
NW qr	21	69	41	160.00	Overflows to the depth of 2 feet.
SW qr	21	69	41	160.00	Same.
W half of NE qr	21	69	41	80,00	Same.
SE qr	21	69	41	160.84	Same.
S half of SW qr	25	69	41	80.00	Same.
NW qr of NE qr	28	69	41	40.00	Same.
E half of NW qr	28	69	41	80.00	Same.
NW qr of NW qr	28	69	41	40.00	Same.
E half of SW qr	28	69	41	80.00	Same.
N half of NE qr	29	69	41	80.00	Same.
NE qr of NW qr	39	69	41	40.00	Same.
W half of NW qr	29	69	41	80.00	Same.
SW qr	29	69	41	160.00	Same.
NE qr	30	69	41	160.00	Overflows to the depth of 4 feet.
SE qr	30	69	41	160.00	Same.
SE qr of NW qr	30	69	40	40.00	Same.
E half of SW qr	30	69	41	80.00	Same.
NE qr	31	69	41	160.00	Same.
NE qr of SE qr	31	69	41	40.00	Same.
SE qr of SE qr	31	69	41	40.00	Same.
All of	32	69	41	640.00	Same.
NW qr	33	69	41	160.00	Same.
SW qr	33	69	41	160.00	Same.
W half of SE qr	33	69	41	80.00	Same.
All of	36	69	41	640.00	Same.
Fr SW qr of NW qr	31	69	42	45.73	Overflows to the depth of 1 foot.
				4,605.73	
44 Fr NW qr of SW qr	31	69	42	45.84	
Fr SW qr of SW qr	31	69	42	45.95	Overflows to the depth of 1 foot.
E qr of SW qr.	31	69	42	40.00	Same.
W half of SW qr	9	68	40	80.00	Same.
NE qr of SE qr	8	68	40	40.,00	Same.
Fr N half of NW qr	12	68	41	59.94	Same.
Fr N half of NE qr	11	68	41	56.54	Overflows to the depth of 4 feet.
S half of NE qr	11	68	41	80.00	Same.
S half of SE qr	12	68	41	80.00	Same.
N half NW qr	11	68	41	54.98	Same.
S half of NW qr	11	68	41	80.00	Same.
N half of SW qr	11	68	41	80.00	Same.
SW qr of SW qr	11	68	41	40.00	Same.
SE qr of NE qr	10	68	41	40.00	Same.
SE qr	10	68	41	160.00	Same.
SW qr	10	68	41	160.00	Same.
S half of SE qr	9	68	41	80.00	Same.
Fr N half of NE qr	8	68	41	46.24	Same.
S half of NE qr	8	68	41	80.00	Same.
NW qr of SE qr	8	68	41	40.00	Same.
SW qr	8	68	41	160.00	Same.
S half of NNW qr	8	68	41	80.00	Same.
Fr N half of EW qr.	8	68	41	45.44	Same.
Fr N half of NE qr.	7	68	41	44.68	Same.

List of swamp and overflowed lands, &c.—Continued.

Parts of section.	Sec.	Town.	R'ng	Area.	Remarks.
			W.		
S half of NE qr.	7	68	41	80.00	Overflows to the depth of 4 feet.
SE qr	7	68	41	160.00	Same.
SW qr	7	68	41	143.48	Same.
S half of NW qr.	7	68	41	72.15	Same.
Fr N half of NW qr.	7	68	41	40.11	Same.
				2,215.35	
					Marsh.
45 NE qr	13	68	41	160.00	Same.
NW qr of SE qr	13	68	41	40.00	Same
SW qr of SW qr	13	68	41	40.00	Same.
N half of SW qr	13	68	41	48.00	Same.
NW qr	13	68	41	160.00	Same.
All of	14	68	41	640.00	Overflows to depth of 3 feet.
All of	15	68	41,	640.00	Same.
SW qr of SE qr	17	68	41	40.00	Same.
SW qr	17	68	41	160.00	Same.
NW qr	17	68	41	160.00	Same.
NE qr	18	68	41	160.00	Same.
NE qr of SE qr	18	68	41	40.00	Same.
S half of SE qr	18	68	41	80.00	Same.
E half of NW qr	18	68	41	80.00	Same.
W half of NW qr	18	68	41	62.63	Same.
W half of SW qr	18	68	41	61.97	Same.
SE qr of SW qr	18	68	41	40.00	Same.
All of fr	19	68	41	602.84	Same.
NW qr	20	68	41	160.00	Same.
SW qr	20	68	41	160.00	Same.
NE qr	20	68	41	160.00	Same.
NW qr	21	68	41	160.00	Same.
N half of SW qr	21	68	41	80.00	Same.
SE qr of SW qr	21	68	41	40.00	Same.
NE qr	21	68	41	160.00	Same.
N half of SE qr	21	68	41	80.00	Same.
NW qr	22	68	41	160.00	Same.
N half of SW qr	22	68	41	80.00	Same.
SE qr	22	68	41	160.00	Same.
				4,647.44	
46 NE qr	22	68	41	160.00	Overflows to the depth of 4 feet.
NW qr	23	68	41	160.00	Same.
NW qr of SW qr	23	68	41	40.00	Same.
W half of NE qr	23	68	41	80.00	Same.
W half of NW qr	29	68	41	80.00	Same.
W half of SW qr	29	68	41	80.00	Same.
SE qr of SW qr	29	68	41	40.00	Same.
All of fr	30	68	41	603.64	Same.
Fr NW qr	31	68	41	142.63	Same.
NE fr of SW qr	31	68	41	40.50	Same.
NW qr of SE qr	31	68	41	40.00	Same.
E half of SE qr	31	68	41	80.00	Same.
NE qr	31	68	41	160.00	Same.
NW qr	32	68	41	160.00	Same.
NE qr of SW qr	32	68	41	40.00	Same.

List of swamp and overflowed lands &c.—Continued.

Parts of section.	Sec.	Town.	R'ng.	Area.	Remarks.
			W.		
Fr NW qr	7	68	42	106.54	Overflows to the depth of 1 foot.
Fr W half of SW qr	7	68	42	77.31	Same.
All of fr	18	68	42	635.92	Same.
W half of NW qr	17	68	42	80.00	Same.
SE qr of SE qr	13	68	42	40.00	Same.
E half of NE qr	24	68	42	80.00	Same.
SE qr	24	68	42	160.00	Overflows to the depth of 3 feet.
SE qr of SW qr	24	68	42	40.00	Same.
W half of NW qr	20	68	42	80.00	Same.
NE qr	19	68	42	160.00	Deep swamp.
N half of SE qr	19	68	42	80.00	Same.
Fr NW qr	19	68	42	159.89	Same.
SW fr qr	19	68	42	160.89	Marsh.
NE qr	25	68	42	160.00	Overflows to the depth of 3 feet.
				3,927.52	
47 SE qr	25	68	42	160.00	Overflows to the depth of 3 feet.
E half of NW qr	25	68	42	80.00	Same.
SW qr of NE qr	30	68	42	40.00	Marsh.
Fr NW qr	30	68	42	161.87	Same.
Fr SW qr	30	68	42	162.79	Same.
Fr W half of NW qr	31	68	42	83.20	Same.
Fr SW qr	31	68	42	163.12	Same.
SE qr of NW qr	36	68	42	40.00	Overflows to the depth of 3 feet.
SW qr of SW qr	36	68	42	40.00	Same.
E half of SW qr	36	68	42	80.00	Same.
SE qr	36	68	42	160.00	Same.
NE qr	36	68	42	160.00	Same.
Entire township	......	68	43	16,751.02	This township is situated on the Missouri river bottom, and part of it is deep swamp and part is marsh or wet land, and all of it is subject to overflow to the depth of from one to ten feet. Thus the entire township is rendered unfit for cultivation, there not being any legal subdivision that contains 20 acres of dry land in it.
				18,082.00	

List of swamp and overflowed lands, &c.—Continued.

Parts of section.	Sec.	Town.	R'ng.	Area.	Remarks.
48			W.		
Entire township		68	44	1,669.76	This township is situated on the Missouri river bottom, and is subject to overflow to the depth of from 4 to 10 feet; it is part timber, and the remainder is prairie. The entire township is unfit for cultivation, there being no legal subdivision that is not overflown.
Entire township		67	43	9,688.79	Same as the above.
Lot No. 9	1	67	42	31.95	Overflows to the depth of 3 feet.
Lot No. 10	1	67	42	48.15	Same.
Lot No. 5	1	67	42	63.30	Same.
Lot No. 6	1	67	42	40.00	Same.
Lot No. 11	1	67	42	34.43	Same.
Lot No. 4	1	67	42	26.75	Same.
Lot No. 3	1	67	42	40.00	Same.
Lot No. 1	2	67	42	43.11	Same.
Lot No. 3	2	67	42	39.18	Same.
Lot No. 4	2	67	42	21.55	Same.
Lot No. 5	2	67	42	40.90	Same.
Lot No. 6	2	67	42	40.90	Same.
Lot No. 7	2	67	42	40.90	Same.
Lot No. 8	2	67	42	25.63	Same.
Lot No. 9	2	67	42	81.80	Same.
Lot No. 11	2	67	42	36.08	Same.
Lot No. 12	2	67	42	37.86	Same.
Lot No. 7	11	67	42	56.10	Same.
				12,106.14	
49 Lot No. 2	11	67	42	40.00	Overflows to the depth of 4 feet.
Lot No. 3	11	67	42	25.35	Same.
Lot No. 4	11	67	42	32.40	Same.
Lot No. 8	11	77	42	45.22	Same.
Lot No. 9	11	67	42	60.17	Same.
Lot No. 10	11	67	42	32.15	Same.
Lot No. 11	11	67	42	33.61	Same.
Lot No. 12	11	67	42	35.22	Same.
Lot No. 1	11	67	42	5.41	Same.
Lot No. 2	14	67	42	34.61	Same.
Lot No. 3	14	67	42	40.00	Same.
Lot No. 4	14	67	42	57.46	Same.
Lot No. 5	14	67	42	35.38	Same.
Lot No. 6	14	67	42	40.00	Same.
Lot No. 7	14	67	42	52.05	Same.
Lot No, 8	14	67	42	52.01	Same.
Lot No. 9	14	67	42	41.83	Same.
Lot No. 10	14	67	42	67.11	Same.
SW qr of SW qr	12	67	42	40.00	Same.
Lot No. 1	13	67	42	4.01	Same.
Lot No. 1	23	67	42	10.92	Same.

List of swamp and overflowed lands, &c.—Continued.

Parts of section.	Sec.	Town.	R'ng.	Area.	Remarks.
			W.		
Lot No. 2	23	67	42	24.40	Overflows to the depth of 4 feet.
E half of NW qr	14	67	42	80.00	Same.
E half of SE qr	15	67	42	80.00	Same.
Lot No. 8	22	67	42	33.12	Same.
Lot No. 9	22	67	42	40.00	Same.
Lot No. 10	22	67	42	51.17	Same.
Lot No. 1	26	67	42	14.85	Same.
Lot No. 2	26	67	42	59.75	Same.
				1,168.20	
50 Lot No. 1	27	67	42	59.27	Overflows to the depth of 4 feet.
Lot No. 2	27	67	42	42.83	Same.
Lot No. 3	27	67	42	29.58	Same.
Lot No. 4	27	67	42	40.00	Same.
Lot No. 5	27	67	42	56.36	Same.
Lot No. 6	27	67	42	58.11	Same.
Lot No. 7	27	67	42	37.50	Same.
SE qr of NW qr	27	67	42	40.00	Same.
W half of NW qr	27	67	42	80.00	Same.
SW qr	27	67	42	160.00	Same.
Lot No. 1	35	67	42	15.25	Same.
Lot No. 8	35	67	42	20.32	Same.
Lots No. 1 and 2	34	67	42	78.70	Same.
S half of NE qr	6	67	42	80.00	Same.
Fr NW qr of NE qr	6	67	42	39.49	Same.
Fr NW qr	6	67	42	161.61	Same.
Fr SW qr	6	67	42	163.77	Same.
Fr all of	7	67	42	647.22	Same.
W half of NW qr	8	67	42	80.00	Same.
SW qr	8	67	42	160.00	Same.
S half of SE qr	8	67	42	80.00	Same.
All of	17	67	42	640.00	Same.
All of fr	18	67	42	646.10	Same.
All of	19	67	42	643.52	Same.
All of	20	67	42	640.00	Same.
NW qr	21	67	42	160.00	Same.
SW qr	21	67	42	160.00	Same.
SE qr	21	67	42	160.00	Same.
SE qr of NE qr	21	67	42	40.00	Same.
				5,219.13	
51 Lot No. 5	22	67	42	40 00	Overflows to the depth of 3 feet.
All of	28	67	42	640.00	Same.
All of	29	67	42	640.00	Same.
All of fr.	30	67	42	641.64	Same.
Lots 1, 2, and 3	31	67	42	78.21	Same.
Lots 1 and 2	32	67	42	81.58	Same.
Lots 1 and 2	33	67	42	79.52	Same.
				2,199	

52 I, Benjamin Rector, locating agent of Fremont county, Iowa, do solemny swear that I understand and have examined the lands bounding the tracts of land particularly designated in the lists hereunto affixed; and I do further solemnly swear that all lands designated in said lists, and each quarter section thereof, are "swamp and overflowed lands," and of the character embraced by the law of Congress approved Sept. 28, 1850.

BENJAMIN RECTOR,
Selecting Agent.

Sworn to and subscribed by said Benjamin Rector, before me, at my office, in the town of Sydney and county of Fremont, State of Iowa, this 27th day of May, 1854.

[L S.] THOMAS GREENWOOD,
County Judge.

SURVEYOR GENERAL'S OFFICE,
Dubuque, Feb. 18*th*, 1863.

I certify that the foregoing transcript of the list of swamp lands in Fremont county, Iowa, has been correctly copied from the original on file in this office.

HENRY A. WILTSE,
Surveyor General.

[Int. rev. 1863. H. A. W.]

53 Endorsed: 1st list of swamp land certified by surveyor general. "A." Filed September 2d, 1865. J. L. Mitchell.

54 1*st list certified from General Land Office.*

GENERAL LAND OFFICE,
January 19*th*, 1865.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the following are true extracts, as hereinafter more particularly stated on page nine, (17,) to wit:

List of swamp lands in the Missouri river land district, Iowa.

[Extract No. 1.]

Parts of section.	Sec.	T'n.	R'ge.	Area.	Remarks.
	*	*	*	*	
	*	*	*	*	
	*	*	*	*	
NE fr qr of NE qr	1	70	40	39.94	More than half marsh.
SE qr of NE qr	do	do	do	40.00	Marsh.
SE qr	do	do	do	160.00	do
NE qr	12	do	do	160.00	do
SW qr of NW qr	do	do	do	40.00	do
SE qr	do	do	do	160.00	do
SW qr	do	do	do	160.00	do
SW qr of NE qr	13	do	do	40.00	do
NW qr	do	do	do	160.00	do
SW qr	do	do	do	160.00	do
NW qr of NW qr	24	do	do	40.00	do
NE qr	23	do	do	160.00	do
W half of SE qr	do	do	do	80.00	do
E half of SW qr	do	do	do	80.00	do
55 W half of NE qr	26	70	40	80	Marsh.
NW qr	do	do	do	160	do
SE qr of NE qr	27	do	do	40	do
N half of SW qr	26	do	do	80	do
SW qr of SW qr	do	do	do	40	do
SE qr	27	do	do	160	do
SE qr of SW qr	do	do	do	40	do
N half of NE qr	34	do	do	80	do
SW qr of NE qr	do	do	do	40	do
NW qr	do	do	do	160	do
NW qr of SW qr	do	do	do	40	do
S half of NE qr	33	do	do	80	do
SE qr	do	do	do	160	do
SE qr of SW qr	do	do	do	40	do
NW fr qr	3	70	41	154.83	Marsh.
W half of SW qr	do	do	do	80	do
NE fr qr of NE qr	4	do	do	37.40	Overflows 4 feet deep.
NW qr. of NE qr	do	do	do	37.45	do do do
S half of NE qr	do	do	do	80.00	do do do
NE qr of NW qr	do	do	do	37.50	do do do
NW qr of NW qr	do	do	do	37.55	do do do
S half ot NW qr	do	do	do	80.00	do do do
SE qr	do	do	do	160.00	do do do
SW qr	do	do	do	160.00	do do do
NE fr qr of NE qr	5	do	do	37.03	do do do
NW fr qr of NE qr	do	do	do	35.92	do do do
S half of NE qr	do	do	do	80.00	do do do
56 NE fr of NW qr	5	70	41	34.82	Overflows 4 feet deep.
NW fr of NW qr	do	do	do	33.72	Do do do
S half of NW qr	do	do	do	80	Do do do
SE qr	do	do	do	160	Do do do
SW qr	do	do	do	160	Do do do
NE fr of NE qr	6	do	do	33.94	Do do do
E half of SE qr	do	do	do	80	Do do do
W half of NW qr	10	do	do	80	Do do do
SE qr of NW qr	10	do	do	40	Marsh.
SW qr of NE	do	do	do	40	Do
W half of SE qr	do	do	do	80	Do
SW qr	do	do	do	160	Do

List of swamp lands, &c.—Continued.

Parts of section.	Sec.	T'n.	R'ng	Area.	Remarks.
All of	9	70	41	640	Part marsh; balance overflowed.
All of	8	do	do	640	Overflows 3 feet.
E half of NE qr	7	do	do	80	Do do
E half of SE qr	7	do	do	80	Do do
NW qr of NW qr	15	do	do	40	Marsh.
All of	17	do	do	640	Overflows 3 feet.
SE qr of NE qr	18	do	do	40	Do do
NE qr of SE qr	do	do	do	40	Do do
SW qr of SE qr	19	do	do	40	Do do
E half of SE qr	do	do	do	80	Do do
All of	20	do	do	640	Marsh.
NE qr	21	do	do	160	Do
SE qr	11	do	do	160	Do
SW qr of SW qr	22	do	do	40	Do
W half of NW qr	27	do	do	80	Do
NE qr	28	do	do	160	Do
NW qr of SE qr	do	do	do	40	Do
57 W half of SE qr	29	70	41	80	Overflows 4 feet.
W half of NE qr	do	do	do	80	Do do
NW qr	do	do	do	160	Do do
SW qr	do	do	do	160	Do do
NE qr	30	do	do	160	Do do
SE qr	do	do	do	160	Do do
NE qr of SW qr	do	do	do	40	Do do
E half of NE qr	31	do	do	80	Overflows 2 feet.
SW qr of SE qr	do	do	do	40	Do do
E half of SE qr	do	do	do	80	Do do
NW qr	32	do	do	160	Do do
SW qr	do	do	do	160	Do do
SW qr of SE qr	do	do	do	40	Do do
E half of SE qr	do	do	do	80	Do do
W half of SW qr	33	do	do	80	Do do
SE qr of SW qr	do	do	do	40	Do do
S half of SE qr	do	do	do	80	Do do
N fr half of NW qr	4	69	40	64.50	Marsh.
SW qr of NW qr	do	do	do	40	Do
SE qr of NE qr	5	do	do	40	Do
NE qr of SE qr	do	do	do	40	Do
W half of SE qr	do	do	do	80	Do
S half of SW half	do	do	do	80	Do
SE qr of SE qr	6	do	do	40	Do
W fr half of NW qr	7	do	do	87.53	Do
NE qr of NW qr	do	do	do	40	Do
N half of NE qr	do	do	do	80	Do
58 N half of NW qr	8	69	40	80	Marsh.
NW qr of NE qr	do	do	do	40	Do
SW qr	12	do	do	160	Overflows 3 feet.
SE qr of NW qr	do	do	do	40	Do do
W half of NE qr	do	do	do	80	Do do
SE qr	do	do	do	160	Do do
All of	13	do	do	640	Do do
E half of NE qr	14	do	do	80	Do do
E half of SE qr	do	do	do	80	Do do
SW qr of SW qr	22	do	do	40	Do do
E half of SW qr	do	do	do	80	Do do
S half of NE qr	do	do	do	80	Do do
SE qr	do	do	do	160	Do do
S half of NW qr	23	do	do	80	Do do

List of swamp lands, &c.—Continued.

Parts of section.	Sec.	T'n.	R'ge.	Area.	Remarks.
SW qr	23	69	40	160	Overflows 3 feet.
NE qr	do	do	do	160	Do do
SE qr	do	do	do	160	Do do
All of	24	do	do	640	Do do
W half of NE qr	25	do	do	80	Overflows 2 feet.
NW qr	do	do	do	160	Do do
N half of SW qr	do	do	do	80	Do do
N half of NE qr	26	do	do	80	Do do
S half of SE qr	do	do	do	80	Do do
NW qr	do	do	do	160	Do do
NE qr of SW qr	do	do	do	40	Do do
W half of SW qr	do	do	do	80	Do do
All of	27	do	do	640	Do do
S half of NE qr	28	do	do	80	Do do
SE qr	do	do	do	160	Do do
59 SW qr	28	69	40	160	Overflows 2 feet.
S half of NW qr.	do	do	do	80	Do do
SE qr of NE qr	29	do	do	40	Do do
SE qr	do	do	do	160	Do do
SW qr	do	do	do	160	Do do
S half of NW qr	do	do	do	80	Do do
S half of NE qr	30	do	do	80	Do do
SE qr	do	do	do	160	Do do
W fr half of SW qr	do	do	do	91.32	Do do
NW fr qr	31	do	do	171.52	Do do
SW fr qr	do	do	do	171.84	Do do
W half of SE qr	do	do	do	80	Do do
W half of NE qr	do	do	do	80	Do do
NE qr of NE qr	do	do	do	40	Do do
NW qr	32	do	do	160	Do do
NE qr	32	do	do	160	Do do
SE qr	do	do	do	160	Overflows 3 feet.
NW qr	33	do	do	160	Do do
SW qr	do	do	do	160	Do do
NE qr	do	do	do	160	Do do
W half of SE qr	do	do	do	80	Do do
NE qr of SE qr	do	do	do	40	Do do
NW qr	34	do	do	160	Do do
W half of SW qr	do	do	do	80	Do do
NE qr	do	do	do	160	Do do
N half of SE qr	do	do	do	80	Do do
NW qr	35	do	do	160	Do do
W half of NE qr	35	do	do	80	Do do
60 NE fr qr of NE qr	4	69	41	36.42	Overflows 3 feet.
NW fr qr of NE qr	do	do	do	36.48	Do do
S half of NE qr	do	do	do	80	Do do
NE qr of NW qr	do	do	do	36.53	Do do
NW qr of NW qr	do	do	do	36.59	Do do
S half of NW qr	do	do	do	80	Do do
NW qr of SW qr	do	do	do	40	Do do
NE fr qr of NE qr	5	do	do	36.64	Do do
NW fr qr of NE qr	do	do	do	36.68	Do do
S half NE qr	do	do	do	80	Do do
SE qr	do	do	do	160	Do do
SW qr	do	do	do	160	Do do
S half of NW qr	do	do	do	80	Do do
NE fr qr of NW qr	do	do	do	36.72	Do do
NW fr qr of NW qr	do	do	do	36.76	Do do
NE fr qr of NE qr	6	do	do	36.97	Do do

List of swamp lands, &c.—Continued.

Parts of section.	Sec.	T'n.	R'ng.	Area.	Remarks.
NW fr qr of NE qr	6	69	41	37.35	Overflows 3 feet.
S half of NE qr	do	do	do	80.00	Overflows 4 feet.
SE qr	do	do	do	160	Do do
SE qr of NE qr	7	do	do	40	Do do
NE qr of SE qr	do	do	do	40	Do do
All of	8	do	do	640	Do do
SW qr of NW qr	9	do	do	40	Do do
SW qr	do	do	do	160	Do do
SE qr	do	do	do	160	Do do
SW qr of NE qr	do	do	do	40	Do do
E half of NE qr	do	do	do	80	Do do
S half of NW qr	10	do	do	80	Do do
61 SW qr	10	69	41	160	Overflows 4 feet.
S half of NE qr	do	do	do	80	Do do
SE qr	do	do	do	160	Do do
S half of NW qr	11	do	do	80	Do do
SW qr	do	do	do	160	Do do
S half of NE qr	do	do	do	80	Do do
SE qr	do	do	do	160	Do do
NW qr	12	do	do	160	Do do
N half of SW qr	do	do	do	80	Do do
NE qr	do	do	do	160	Do do
NW qr of SE qr	do	do	do	40	Do do
NW qr of NW qr	15	do	do	40	Do do
All of	17	do	do	640	Do do
NE qr	18	do	do	160	Do do
SE qr	do	do	do	160	Do do
SE qr of NW qr	do	do	do	40	Do do
E half of SW qr	do	do	do	80	Do do
E half of NW qr	19	do	do	80	Do do
NE qr	do	do	do	160	Do do
SE qr	do	do	do	160	Deep swamps.
All of	20	do	do	640	Overflows 4 feet.
NW qr	21	do	do	160	Overflows 2 feet.
SW qr	do	do	do	160	Do do
W half of NE qr	do	do	do	80	Do do
SE qr	do	do	do	160	Do do
S half of SW qr	25	do	do	80	Do do
NW qr of NE qr	28	do	do	40	Do do
E half of NW qr	do	do	do	80	Do do
62 NW qr of NW qr	28	69	41	40	Overflows 2 feet.
E half of SW qr	do	do	do	80	Do do
N half of NE qr	29	do	do	80	Do do
NE qr of NW qr	do	do	do	40	Do do
West half of NW qr	do	do	do	80	Do do
SW qr	do	do	do	160	Do do
NE qr	30	do	do	160	Overflows 4 feet.
SE qr	do	do	do	160	Do do
SE qr of NW qr	do	do	do	40	Do do
E half of SW qr	do	do	do	80	Do do
NE qr	31	do	do	160	Do do
NE qr of SE qr	do	do	do	40	Do do
SE qr of SE qr	do	do	do	40	Do do
All of	32	do	do	640	Do do
NW qr	33	do	do	160	Do do
SW qr	do	do	do	160	Do do
W half of SE qr	do	do	do	80	Do do
All of	36	do	do	640	Do do
		do	do		
SW fr qr of NW qr	31	69	42	45.73	Overflows 1 foot.

List of swamp lands, &c.—Continued.

Parts of section.	Sec.	T'n.	R'ng.	Area.	Remarks.
NW fr qr of SW qr	31	69	42	45. 84	Overflows 1 foot.
SW fr qr of SW qr	do	do	do	45. 95	Do do
SE qr of SW qr	do	do	do	40	Do do
W half of SW qr	9	68	40	80	Overflows 1 foot.
NE qr of SE qr	8	do	do	40	Do do
63 N fr half of SW qr	12	68	41	59. 94	Overflows 4 feet.
N fr half of NE qr	11	do	do	56. 54	Do do
S half of NE qr	do	do	do	80	Do do
S half of SE qr	12	do	do	80	Do do
N half of NW qr	11	do	do	54. 98	Do do
S half of NW	do	do	do	80	Do do
N half of SW qr	do	do	do	80	Do do
SW qr of SW qr	do	do	do	40	Do do
SE qr of NE qr	10	do	do	40	Do do
SE qr	do	do	do	160	Do do
SW qr	do	do	do	160	Do do
S half of SE qr	9	do	do	80	Do do
N fr half of NE qr	8	do	do	46. 24	Do do
S half of NE qr	do	do	do	80	Do do
NW qr of SE qr	do	do	do	40	Do do
SW qr	do	do	do	160	Do do
S half of NW qr	do	do	do	80	Do do
N fr half of NW qr	do	do	do	45. 44	Do do
N fr half of NW qr	7	do	do	44. 68	Do do
S half of NE qr	do	do	do	80	Do do
SE qr	do	do	do	160	Do do
SW qr	do	do	do	143. 48	Do do
S fr half of NW qr	do	do	do	72. 15	Do do
N fr half of NW qr	do	do	do	40. 11	Do do
NE qr	13	do	do	160	Marsh.
NW qr of SE qr	do	do	do	40	Do
SW qr of SW qr	do	do	do	40	Do
N half of SW qr	do	do	do	80	Do
NW qr	do	do	do	160	Do
64 All of	14	68	41	640	Marsh.
All of	15	do	do	640	Overflows 3 feet.
SW qr of SE qr	17	do	do	40	Do do
SW qr	do	do	do	160	Do do
NW qr	do	do	do	160	Do do
NE qr	18	do	do	160	Do do
NE qr of SE qr	do	do	do	40	Do do
S half of SE qr	do	do	do	80	Do do
E half of NW qr	do	do	do	80	Do do
W fr half of NW qr	do	do	do	62. 63	Do do
W fr half of SW qr	do	do	do	61. 97	Do do
SE qr of SW qr	do	do	do	40	Do do
All of fr	19	do	do	602. 84	Do do
NW qr	20	do	do	160	Do do
SW qr	do	do	do	160	Do do
NE qr	do	do	do	160	Do do
NW qr	21	do	do	160	Do do
N half of SW qr	do	do	do	80	Do do
SE qr of SW qr	do	do	do	40	Do do
NE qr	do	do	do	160	Do do
N half of SW qr	do	do	do	80	Do do
NW qr	22	do	do	160	Do do
N half of SW qr	do	do	do	80	Do do
SE qr	do	do	do	160	Do do

List of swamp lands, &c.—Continued.

Parts of section.	Sec.	T'n.	R'ng.	Area.	Remarks.
NE qr	22	68	41	160	Overflows 4 feet.
NW qr	23	do	do	160	Do do
NW qr of SW qr	do	do	do	40	Do do
W half of NE qr	do	do	do	80	Do do
65 W half of NW qr	29	68	41	80	Overflows 4 feet
W half of SW qr	do	do	do	80	Do do
SE qr of SW qr	do	do	do	40	Do do
All of fr.	30	do	do	603.64	Do do
NW fr. qr	31	do	do	142.63	Do do
NE fr. qr of SW qr	do	do	do	40.50	Do do
NW qr of SE qr	do	do	do	40	Do do
E half SE qr	do	do	do	80	Do do
NE qr	do	do	do	160	Do do
NW qr	32	do	do	160	Do do
NE qr of SW qr	do	do	do	40	Do do
NW fr. qr	7	68	42	106.54	Overflows 1 foot.
W fr. of SW qr	do	do	do	77.31	Do do
All of fr.	18	do	do	635.92	Do do
W half of NW qr	17	do	do	80	Do do
SE qr of SE qr	13	do	do	40	Do do
E half of NE qr	24	do	do	80	Do do
SE qr	do	do	do	160	Overflows 3 feet.
SE qr of SW qr	do	do	do	40	Do do
W half of NW qr	20	do	do	80	Do do
NE qr	19	do	do	160	Deep swamp.
N half of SE qr	do	do	do	80	Do do
NW fr. qr	do	do	do	159.89	Do do
SW fr qr	do	do	do	160.89	Overflows 3 feet.
NE qr	25	do	do	160	Do do
SE qr	do	do	do	160	Do do
E half of NW qr	do			80	Do do
66 SW qr of NE qr	30	68	42	40	Marsh.
NW fr qr	do	do	do	168.87	Do
SW fr qr	do	do	do	162.79	Do
W fr half of NW qr	31	do	do	83.20	Do
SW fr qr	do	do	do	163.12	Do
SE qr of NW qr	36	do	do	40	Overflows to the depth of 3 feet.
SW qr of SW qr	do	do	do	40	Do do
E half of SW qr	do	do	do	80	Do do
SE qr	do	do	do	160	Do do
NE qr	do	do	do	160	Do do
(Entire township)		68	43	16,751.02	This township situated on the Missouri river, bottom and part of it is deep swamp and part marsh or wet marsh or wet land, and all of it is subject to overflow to the depth of from one to ten feet; thus the entire township is rendered unfit for cultivation, there not being any legal subdivision that contains 20 acres dry land in it.

List of swamp lands, &c.—Continued.

Parts of section.	Sec.	T'n.	R'ng.	Area.	Remarks.
67 Entire township		68	44	1,669.76	This township is situated on the Missouri river bottom, and is subject to overflow to the depth of from 4 to 10 feet, it is part timber, and the remainder is prairie. The entire township is unfit for cultivation, there being no legal subdivision that is not more than half overflown.
Entire township		67	43	9,688.79	Same as above.
Lot No. 9	1	67	42	31.95	Overflows 3 feet.
Lot do 10	do	do	do	48.15	Do do
Lot do 5	do	do	do	63.30	Do do
Lot do 6	do	do	do	40	Do do
Lot do 11	do	do	do	34.43	Do do
Lot do 4	do	do	do	26.75	Do do
Lot do 3	do	do	do	40	Do do
Lot do 1	2	do	do	43.11	Do do
Lot do 3	do	do	do	39.18	Do do
Lot do 4	do	do	do	21.55	Do do
Lot do 5	do	do	do	40.90	Do do
Lot do 6	do	do	do	40.90	Do do
Lot do 7	do	do	do	40.90	Do do
Lot do 8	do	do	do	25.63	Do do
Lot do 9	do	do	do	81.80	Do do
68 Lot No. 11	2	67	42	36.08	Overflows 3 feet.
Lot do 12	do	do	do	37.86	Do do
Lot do 1	11	do	do	55.10	Do do
Lot do 2	do	do	do	40	Do do
Lot do 3	do	do	do	25.35	Do do
Lot do 4	do	do	do	32.40	Overflows 4 feet.
Lot do 8	do	do	do	45.22	Do do
Lot do 9	do	do	do	60.17	Do do
Lot do 10	do	do	do	32.15	Do do
Lot do 11	do	do	do	33.61	Do do
Lot do 12	do	do	do	35.22	Do do
Lot do 1	14	do	do	5.41	Do do
Lot do 2	do	do	do	34.61	Do do
Lot do 3	do	do	do	40	Do do
Lot do 4	do	do	do	57.46	Do do
Lot do 5	do	do	do	35.38	Do do
Lot do 6	do	do	do	40	Do do
Lot do 7	do	do	do	52.05	Do do
Lot do 8	do	do	do	52.01	Do do
Lot do 9	do	do	do	41.83	Do do
Lot do 10	do	do	do	67.11	Do do
SW qr of SW qr	12	do	do	40	Do do
Lot No. 1	13	do	do	4.01	Do do
Lot do 1	23	do	do	10.92	Do do
Lot do 2	do	do	do	24.40	Do do
E half of NW qr	14	do	do	80	Do do
E half SE qr	15	do	do	80	Do do
Lot No. 8	22	do	do	33.12	Do do
Lot do 9	do	do	do	40	Do do
69 Lot No. 10	22	67	42	51.17	Overflows 4 feet.

List of swamp lands, &c.—Continued.

Parts of section.	Sec.	Town.	R'ng.	Area.	Remarks.
Lot No. 1	26	67	42	14.88	Overflows 4 feet.
Lot do 2	do	do	do	59.75	Do do
Lot do 1	27	do	do	59.27	Do do
Lot do 2	do	do	do	42.83	Do do
Lot do 3	do	do	do	29.58	Do do
Lot do 4	do	do	do	40	Do do
Lot do 5	do	do	do	56.36	Do do
Lot do 6	do	do	do	58.11	Do do
Lot do 7	do	do	do	37.50	Do do
SE qr of NW qr	do	do	do	40	Do do
W half of NW qr	do	do	do	80	Do do
SW qr	do	do	do	160	Do do
Lot No. 1	35	do	do	15.25	Do do
Lot do 8	do	do	do	20.32	Do do
Lots 1 and 2	34	do	do	78.70	Do do
S half of NE qr	6	do	do	80	Do do
NW fr. qr of NE qr	do	do	do	39.49	Do do
NW qr	do	do	do	161.61	Do do
SW qr	do	do	do	163.77	Do do
All of fr	7	do	do	647.22	Do do
W half of NW qr	8	do	do	80	Do do
SW qr	do	do	do	160	Do do
S half of SE qr	do	do	do	80	Do do
All of	17	do	do	640	Do do
All of fr	18	do	do	646.10	Do do
All of fr	19	do	do	643.52	Do do
All of	20	do	do	640	Do do
NW qr	21	do	do	160	Do do
70 SW qr	21	67	42	160	Overflows 4 feet.
SE qr	do	do	do	160	Do do
SE qr of NE qr	do	do	do	40	Do do
Lot No. 5	22	do	do	40	Overflows 3 feet.
All of	28	do	do	640	Do do
All of	29	do	do	640	Do do
All of fr	30	do	do	641.64	Do do
Lots 1, 2 and 3	31	do	do	78.21	Do do
Lots 1 and 2	32	do	do	81.58	Do do
Lots 1 and 2	33	do	do	79.52	Do do
	○	○	○	○ ○	
	○	○	○	○ ○	
	○	○	○	○ ○	
	○	○	○	○ ○	
	○	○	○	○ ○	

SURVEYOR GENERAL'S OFFICE,
Dubuque, 20*th*, 1854.

I, Warner Lewis, surveyor general of the State of Iowa, do hereby certify that the foregoing list marked is a correct transcript of the original lists of selections made by the county surveyor, or State locating agents; that the same has been carefully compared with the field-notes, plats, and other evidences on file in this office, and by the affidavit of said county surveyor, or State locating agents, it appears that the greater part of each smallest legal subdivision of the lands embraced in said lists is swampy or subject to such overflow as to render the same unfit for cultivation, and therefore of the character contemplated by the act of 28th Sept., 1856.

(Signed) WARNER LEWIS,
Surveyor General.

(End of extract No. 1.)

71 The foregoing being true extracts from the report dated Sept. 20th, 1854, of the surveyor general of the State of Iowa, of swamp land selection, under color of the act of Congress approved Sept. 28th, 1850, which report was filed in this office on the 27th day of Sept., 1854. And I further hereby certify that, of the tracts above described, being in odd numbered sections, the following being a true extract from the original list on the file of this office, having been brought to the test of the official field-notes and other data, as required by the decision of the Secretary of the Interior of the 8th February, 1860, certified copy C, herewith, were found not to be swamp, and accordingly were rejected by the Commissioner of the General Land Office, under date of October 25th, 1861, to wit:

Swamp land rejections.

Parts of section.	Sec.	Town.	R'ng.	Area.	Remarks.
	*	*	*	*	
	*	*	*	*	
	*	*	*	*	
S half of SW qr, SE qr of NE qr, W half of SE qr and NE qr of SE qr	5	69	40	240	
N half of NE qr, N half of NW qr and SW qr of NW qr	7	69	40	207.53	
SE qr, E half of NE qr	1	70	40	239.94	
W half of sec, and SW qr of NE qr	13	70	40	360	
NE qr, W half of SE qr, E half of SW qr	23	70	40	320	
72 SE qr, SE qr of NE qr and SE qr of SW qr	27	70	40	240	
SE qr, S half of NE qr and SE qr of SW qr	23	70	40	280	
12	*	*	*	*	
Whole of fr sec	5	69	41	626.80	
SE qr of NE qr and NE qr of SE qr	7	69	41	80	
S half of sec, E half of NE qr, SW qr of NE qr and SW qr of NW qr	9	69	41	480	
S half of sec, S half of NE qr and S half of NW qr	11	69	41	480	

Swamp land rejections.—Continued.

Parts of section.	Sec.	Town.	R'ng.	Area.	Remarks.
NW qr and W half of SW qr	3	70	41	234.83	
S half of sec, N half of NW qr, NE qr	5	70	41	(541.48) 621.48	
E half of NE qr and E half of SE qr	7	70	41	160	
Whole of sec	9	70	41	640	
NW qr of NW qr	15	70	41	160	
E half of sec, NW qr, W half of SW qr and NE qr of SW qr	17	70	41	600	
E half of SE qr and SW qr of SE qr	19	70	41	120	
E half of sec	21	70	41	320	
W half of NW qr	27	70	41	80	
W half of sec, W half of NE qr and W half of SE qr	29	70	41	480	
E half of NE qr, E half of SE qr and SW qr of SE qr	31	70	41	200	
S half of SE qr, S half of SW qr and NW qr of SW qr	33	70	41	200	

Compared with original list of railroad selections, January 5, 1865.

T. CROMWELL.

73 And I further hereby certify that these said tracts were subsequently certified to the State of Iowa as railroad lands, according to a verified transcript, certified under date of 19th March, 1859, and sent to the governor of that State, which said certified transcript has vested the title to said lands, in virtue of the act of 3d August, 1854, (1 Sess. 33 Congress, 346,) U. S. Statutes, vol. 10, page 346, in the said State, under the grant of 15th May, 1856.

Copy of said certificate, with the approval herewith, marked A:

A.

GENERAL LAND OFFICE, *March 19th*, 1859.

I, Thomas A. Hendricks, Commissioner of the General Land Office, do hereby certify that the foregoing, on page one to twenty, inclusive, is a true and correct list of the tracts of land selected by the agent of the State of (Iowa) outside of the six and within the fifteen mile limits, under the act of Congress approved May 15th, 1856, entitled An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State; the said selections being from the lands of the United States, in alternate sections, designated by odd numbers, most contiguous to the tier of sections within six sections in width on each side of the railroad from Burlington, on the Mississippi river, to a point on the Missouri river, near the mouth of the Platte river, known as the Burlington and Missouri River railroad, being 74 in lieu of lands in alternate sections, designated by odd numbers, within said sections in width each side of said road, which the United States had legally sold, or to which the right of pre-emption had legally attached prior to the period at which the rights of the State inured under said grant, and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of May 15th, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first herein above written.

[SEAL.] (Signed) THOMAS A. HENDRICKS,
Commissioner.

DEPARTMENT OF THE INTERIOR,
March 23d, 1859.

Approved, subject to conditions and rights above mentioned.
(Signed) J. THOMPSON, *Secretary.*

75 And I hereby further certify that of the tracts described in the report of swamp land selection made by the surveyor general on the said 20th day of Sept., 1854, the following tracts were certified to the State of Iowa, under date of June 20th, 1859, as ennurring to the State as swamp land, the approval thereof as swamp having been made by the Secretary of the Interior on the 25th of February, 1859, to wit:

Parts of section.	Sec.	T'n.	R'ge.	Area.
	*	*	*	*
	*	*	*	*
	*	*	*	*
	*	*	*	*
NE qr of SE qr	8	68	40	40
W half of SW qr	9	68	40	80
N fr half of N W qr and SW qr of NW qr	4	69	40	104, 50
SE qr of SE qr	6	69	40	40
N half of NW qr and NW qr of SE qr	8	69	40	120
SW qr	12	69	40	160
SE qr of NW qr, and N half of NE qr, and SE qr	12	69	40	280
All of sec	13	69	40	640
E half of NE qr and E half of SE qr	14	69	40	160
76 SW qr of SW qr and E half of SW qr	22	69	40	120
S half of NE qr and SE qr	22	69	40	240
S half of NW qr and SW qr	23	69	40	240
NE qr	23	69	40	160
SE qr	23	69	40	160
All of sec	24	69	40	640
W half of NE qr and NW qr	25	69	40	240
N half of SW qr	25	69	40	80

Swamp lands —Continued.

Parts of section.	Sec.	T'n.	R'ge.	Area.
N half of NE qr, S half of SE qr, and NE qr	26	69	40	320
NE qr of SW qr and W half of SW qr	26	69	40	120
All of sec	27	69	40	640
S half of NE qr and SE qr	28	69	40	240
SW qr	28	69	40	160
S half of NW qr	28	69	40	80
SE qr of NE qr and SE qr	29	69	40	200
SW qr and S half of NW qr	29	69	40	240
S half of NE qr and SE qr	30	69	40	240
W fr half of SW qr	30	69	40	91.32
NW fr qr, SW fr qr, W half of SE qr, W half of NE qr, and NE qr of NE qr	31	69	40	543.36
NW qr	32	99	40	160
NE qr and SE qr	32	69	40	320
NE qr, W half of SE qr, and NE qr of SE qr	33	69	40	280
NW qr and SW qr	33	69	40	320
NW qr, N half of SW qr	34	69	40	240
NE qr and N half of SE qr	34	69	40	240
NW qr and W half of NE qr	35	69	40	240
77 NE qr, SW qr of NW qr, and SE	12	70	40	360
SW qr	12	70	40	160
NW qr of NW qr	24	70	40	40
W half of NE qr and NW qr	26	70	40	240
N half of SW qr and SW qr of SW qr	26	70	40	120
W half of NE qr, SW qr of NE qr, and NW qr	34	70	40	280
NW qr of SW qr	34	70	40	40
	○	○	○	○
NE fr qr	7	68	41	124.68
N fr half of NW qr	7	68	41	40.11
SE qr of NW qr and E half of SW qr	7	68	41	120
SE qr	7	68	41	160
NE fr qr, NW fr qr	8	68	41	251.68
SW qr and NW qr of SE qr	8	68	14	200
S half of SE qr	9	68	41	80
SE qr of NE qr and S half of sec	10	68	41	360
NE fr qr	11	68	41	136.54
NW fr qr	11	68	41	134.98
N half of SW qr and SW qr of SW qr	11	68	41	120
N fr half of NE qr and S half of SE qr	12	68	41	139.94
NE qr and NW qr	13	68	41	320
N half of SW qr and SW qr of SW qr	13	68	41	120
NW qr of SE qr	13	68	41	40
The whole of	14	68	41	640
The do do	15	68	41	640
W half of	17	68	41	320
SW qr of SE qr	17	68	41	40
78 N half of NE qr and NE qr of NW qr	18	68	41	120
W fr half of NW qr	18	68	41	62.63
W fr half of SW qr and SE qr of SW qr	18	68	41	101.97
NE qr of SE qr and S half of SE qr	18	68	41	120
NW qr of NE qr and SE qr of NE qr	19	68	41	80
NW qr and SW qr	19	68	41	282.84
NE qr of SE qr and S half of SE qr	19	68	41	120
NE qr, W half of sec	20	68	41	480
NE qr and NW qr	21	68	41	320
N half of SW qr and SE qr of SW qr	21	68	41	120
N half of SE qr	21	68	41	80
E half of sec	22	68	41	320

Swamp lands—Continued.

Parts of section.	Sec.	T'n.	R'ge.	Area.
NW qr and N half of SW qr	22	68	41	240
W half of NE qr and NW qr	23	68	41	240
NW qr of SW qr	23	68	41	40
W half of NW qr and W half of SW qr	29	68	41	160
SE qr of SW qr	29	68	41	40
E half of sec	30	68	41	320
NW qr and SW fr qr	30	68	41	283. 64
NE qr, NW fr qr, and NE qr of SW qr	31	68	41	342. 63
NW qr of SE qr and SE qr of SE qr	31	68	41	80
NW qr	32	68	41	160
NE fr qr and N half of NW qr	4	69	41	236. 02
NW qr of SW qr	4	69	41	40
NE fr qr of NE qr and NW fr qr of NE qr	6	69	41	74. 32
S half of NE qr and SE qr	6	69	41	240
NE qr and NW	8	69	41	320
SW qr, W half of SE qr, and NE qr of SE	8	69	41	280
79 S half of NE qr and S half of NW qr	10	69	41	160
SW qr and N half of SE qr	10	69	41	240
NE qr, NW qr and NE qr of SW qr	12	69	41	360
NW qr of NW qr	15	69	41	40
W half of NE qr, SE qr of NE qr and NW qr	17	69	41	280
SW qr and SE qr	17	69	41	320
NE qr, SE qr of NW qr and NE qr of SW qr	18	69	41	240
SE qr	18	69	41	160
NE qr and E half of NW qr	19	69	41	240
W half of SE qr and NE qr of SE qr	19	69	41	120
NE qr, NW qr, E half, SW qr and SE qr	20	69	41	560
NW qr and SW qr	21	69	41	320
S half of SW qr	25	69	41	80
NW qr of NE qr, E half of NW qr	28	69	41	120
NW qr of NW qr and E half of SW qr	28	69	41	120
NE qr of NW qr, N half of NE qr, SW qr of NW qr, NW qr of SW qr and E half of SW qr	29	69	41	280
N half of SE qr and SW qr of SE qr	30	69	41	120
NE qr, SE qr of NW qr and E half of SW qr	30	66	41	280
NE qr and E half of SW qr	31	69	41	240
NE qr and NW qr	32	69	41	320
SE qr and E half of SW qr	32	69	41	240
NW qr, SW qr and W half of SE qr	33	69	41	400
The whole of	36	69	41	640
N fr half of sec and S half of sec	4	70	41	629. 90
NE qr of NE qr and E half of SE qr	6	70	41	113. 94
SW qr of NE qr, W half of NW qr	10	70	41	120
SE qr of NW qr, SW qr and W half of SE qr	10	70	41	280
80 The whole of sec	8	70	41	640
SE qr of NE qr and NE qr of SE qr	18	70	41	80
The whole of sec	20	70	41	640
SW qr of SW qr	22	70	41	40
NE qr and NW qr of SE qr	28	70	41	200
NE qr, SE qr and NE qr of SW qr	30	70	41	360
NW qr, SW qr, SW qr of SE qr and E half of SE qr	32	70	41	440
	*	*	*	*
	*	*	*	*
Lots 3, 4, 5, 6, 9 and 11	1	67	42	236. 43
Lots 1, 3, 5, 7, 11 and 12	2	67	42	278. 93
W half of NE qr, NW qr and SW qr	6	67	42	404. 87
The whole of sec	7	67	42	647. 22

Swamp lands—Continued.

Parts of section.	Sec.	T'n.	R'ge.	Area.
SW qr and SW qr of SE qr	8	67	42	200
Lots 1, 8, 9, 10, 11 and 12	11	67	42	261.47
SW qr of SW qr	12	67	42	40
Lot 1	13	67	42	4.01
Lots 2, 3, 4, 5, 6, 7, 8, 9 and 10	14	67	42	420.45
E half of NW qr	14	67	42	80
SE qr of SE qr	15	67	42	40
The whole of sec	17	67	42	640
The whole of sec	18	67	42	646.10
The whole of sec	19	67	42	643.52
The whole of sec	20	67	42	640
SE qr of NE qr and SE qr of NW qr	21	67	42	80
W half of NW qr, SW qr and W half of SE qr	21	67	42	320
Lots 8, 9 and 10	22	67	42	124.29
81 Lot 1	26	67	42	14.85
Lots 3, 4, 5 and W half of NW qr and SW qr	27	67	42	365.94
The whole of sec	28	67	42	640
Do. do. do.	29	67	42	640
Do. do. do.	30	67	42	641.64
fr do.	31	67	42	78.21
fr do.	32	67	42	81. 8
fr do.	33	67	42	79.52
Lots 1 and 2	34	67	42	78.70
Lot 1 and NW fr qr	35	67	42	35.57
W half of NW qr	17	68	42	80
The whole of sec	18	68	42	635.92
NE qr. NW qr, SW qr and N half of SE qr	19	68	42	560.78
SE qr of NE qr, SE qr of SW qr and SE qr	24	68	42	240
NE qr and E half of NW qr	25	68	42	240
E half of SE qr and SW qr of SE qr	25	68	42	120
NW qr and SW qr of SW qr	30	68	42	203.38
N half of SW qr	30	68	42	81.28
SW qr	31	68	42	163.12
E half of NE qr, SW qr of NE qr and SE qr of NW qr, NE qr of SW qr, SW qr of SW qr and SE qr	36	68	42	400
NW fr qr of SW qr	31	69	42	45.84
	○	○	○	○
The whole of sec	1	67	43	636.64
Do. do. do.	2	67	43	637.04
NE fr qr, SW fr qr and SE fr qr	3	67	43	345.80
The whole of sec	10	67	43	640.90
Do. do. do.	11	67	43	640
82 Whole of sec	12	67	43	640
Do. do do.	13	67	43	640
Do. do do.	14	67	43	640
Lots 1, 2, 3, and SE qr of SW qr	15	67	43	150.78
The whole of sec	21	67	43	381.20
Do. do,	22	67	43	639.65
Do. do	23	67	43	640
Do. do	24	67	43	640
Do. do	25	67	43	640
Do. do	26	67	43	640
NE qr, N half of NW qr, and NE qr of SE qr	27	67	43	280
The whole of fr	35	67	43	69.20
Do. do	36	67	43	76.52
The whole of fr.	7	68	43	453.04
Do. do	8	68	43	477.88
Do. do	9	68	43	489.90

Swamp lands—Continued.

Parts of section.	Sec.	T'n.	R'ge.	Area.
The whole of fr	10	68	43	501.08
Do. do	11	68	43	511.62
Do. do	12	68	43	524.86
The whole of sec	13	68	43	640
Do. do	14	68	43	640
Do. do	15	68	43	640
Do. do	17	68	43	640
Fr sec	18	68	43	609.14
NE qr and E half of SE qr	19	68	43	240
The whole of sec	20	68	43	640
Do. do	21	68	43	640
Do. do	22	68	43	640
83 Do. do	23	68	43	640
Do. do.	24	68	43	640
Do. do	25	68	43	640
Do. do	26	68	43	640
Do. do	27	68	43	640
Do. do	28	68	43	640
N half of sec, NW qr of SW qr, E half of SW qr and S E qr	29	68	43	600
E half of NE qr, NW qr of NE qr and NE qr of SE qr	30	68	43	160
N half of sec	34	68	43	320
E half of SW qr and SE qr	34	68	43	240
The whole of sec	35	68	43	640
Do. do	36	68	43	640
	*	*	*	*
Lots 2, 3, and NE fr. qr	10	68	44	222.23
NW qr, and lots 1, 2, and 3	11	68	44	281.57
NE fr qr, E half of NW qr and SE qr of SW qr	12	68	44	198.40
Lots 2, 3, and 4, and NE qr of NE qr	13	68	44	165.63

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above-written.

J. M. EDMONDS,
Commissioner of the General Land Office.

[Int. rev., J. A. H., Jan. 19, 1865.]

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84 DEPARTMENT OF THE INTERIOR,
Washington, Feb'y 8th, 1860.

SIR: In reply to your communication of the 4th, and report of the 21st ultimo, relative to swamp land selections in Louisiana which conflict with railroad grants, I have to state that it appears to me that my decision of the 23d of July last furnishes a rule for the action of your office, in cases of conflict, wherein the swamp selections had been made and reported to your office prior to the 3d of March, 1857.

It is true that in my letter of the 12th of August, 1858, I approved the suspension of action upon cases of conflict in Louisiana, where land that had been embraced in swamp lists that were on file on the 3d of March, 1857, were found also to be within railroad grants, which had vested prior to that date, until the General Land Office could determine whether such lands ought to be certified to the State under

the railroad grant of 3d of June, 1856, or the swamp grant. This may have been regarded as looking to an investigation into the question of the swampy or dry condition of the land on the 28th day of Sept. 7, 1850, or the 3d day of March, 1849; but as case after
85 case arose, and delay in carrying out the conflicting grants,
appeared to threaten greater evils than those likely to arise from mistakes, in my letter of the 23d of July last, I informed you in substance in reference to swamp selections on your files on the 3d of March, 1857, that if a title under a railroad grant had not vested prior to that date, my opinion was that Congress, by the act of that date, had decided that the title should pass under the swamp grant; on the other hand if the title under the railroad grant had vested, prior to that date, the land office might proceed to decide as to the swampy character of the land upon the field-note of the surveys, and the papers on file and of record on the 3d of March, and if the claim of the State under the older grant was satisfactorily established to affirm the title under that grant, but if the swamp claim was not satisfactorily sustained to certify the title under the railroad grant.

The conflicts which existed on the 3d March, 1857, we were compelled to settle according to the law of that date, but that law is retrospective only in its operation; since that date we are left to administer the swamp and railroad grants solely under the laws
86 making them, and as the swamp selections are made under
the direction and supervision of the department, and approved by the Secretary of the Interior, it is clearly within our authority to adopt such a policy or course of action in the administration of the grants as will give effect to the laws of the United States, prevent embarassment in conducting the business of the General Land Office, and most effectually do justice to the States interested, confining the following remarks to cases wherein the claims under the swamp grants is based on selections made and reported to the General Land Office on or subsequent to the 3d of March, 1857. I would remark first, in cases in which the swamp selections have been made, and reported prior to the definite location of a railroad route, and the lands fall within the six mile limits of the line of road, your office should proceed in the usual and regular manner, and determine from the record and file of the General Land Office whether the tracts did pass to the State under the swamp grant. Should you decide in the affirmative, the title to the selected tracts should be completed under the swamp grant; but if you are not warranted in making
87 such affirmative decision, the swamp claim may be rejected,
and the title certified to the State under the later but more specific grant. Second: In that class of cases in which a title to lands within the six mile limits of a railroad line has vested in a State under a railroad grant, the surveyor general should not thereafter admit or report selections of the same tracts as swamp lands. The swamp grant may be indeed the earlier, but the railroad grant is more specific; the title under it has become fully vested, and it should be fully recognized, even if the land was of such description as to fall under the swamp grants of 1849 or 1850.

The effect of the later grant is at most only to change the use of for which the grantee receives the lands; I would not call in question the power of Congress to make that change. When the State accepts the later grant, and proceeds to complete her title under it, she has assented to the change, and both the grantor and grantee appear to be concluded by this voluntary, yet concurrent
88 action. Third: When lands lie between the six and fifteen miles limits of a located railroad, but have never been listed and approved to the State under the provision of the railroad grant so as to vest that title, and the same lands fall within the description granted in 1849 and 1850 for drainage and levee purposes, the State appears to have the right to claim title under either grant, and if she is so claiming under both, I think we may examine the claim under the older grant, and if that be satisfactory, approve and pattent the lands, but if not satisfactory, reject the same, and proceed under the later grant. After indemnity lists have been approved and transmitted to the State authorities, the lands therein are no longer liable to selection or report as swamp lands, and any selection that may have been made thereof may be rejected. When the department has fully executed one grant, its officers should cease all action under another grant of the same lands to the same grantee; and where lands between the six and fifteen miles limits of a rail-
89 road line, which has been located, are by executive order withheld from pre-emption and ordinary private entry in order to facilitate the adjustment of a grant to a State for said road purposes, I think that the State authorities, from respect to the action of the State, as well as to that of the United States, ought to waive any right which she may have to make selections of the withheld tracts under the swamp grant.

Should any State persist in that policy, and bring thus upon your office the evils which were sought to be avoided by the withrawal of the land, it may be a question whether the withdrawal of such land within her limits should not be removed and the land left in market whilst the adjustment of the railroad grant is progressing.

Very respectfully, your ob'd't serv't,

J. THOMPSON, *Secretary.*

The Commissioner *of the General Land Office.*

90 Endorsed: 1st selections. Swamp lands, filed in General Land Office, Sept. 27, 1854. Certified by Commissioner Gen. L. O. "C." Filed Sept. 2nd, 1865. J. L. Mitchell, clerk.

91 *Swamp lands, Fremont county, Iowa, reported by the sur. gen. to land office at Council Bluffs.*

[1st list, reported by the sur. gen., and certified from L. O. at Council Bluffs.]

Parts of section.	Sec.	Town.	R'nge.	Area.	Remarks.
NE qr of NE qr	1	70	40	39.94	More than ½ marsh.
SE qr of NE qr	1	70	40	40.00	Marsh.
SE qr	1	70	40	160.00	Do.
NE qr	12	70	40	160.00	Do.
SW qr of NW qr	12	70	40	40.00	Do.
SE qr	12	70	40	160.00	Do
SW qr	12	70	40	160.00	Do
SW qr of NE qr	13	70	40	40.00	Do.
NW qr	13	70	40	160.00	Do.
SW qr	13	70	40	160.00	Do.
NW qr of NW qr	24	70	40	40.00	Do.
NE qr	23	70	40	160.00	Do.
W half of SE qr	23	70	40	80.00	Do.
E half of SW qr	23	70	40	80.00	Do.
W half of NE qr	26	70	40	80.00	Do.
NW qr	26	70	40	160.00	Do.
SE qr of NE qr	27	70	40	40.00	Do.
N half of SW qr	26	70	40	80.00	Do.
SW qr of SW qr	26	70	40	40.00	Do.
SE qr	27	70	40	160.00	Do.
SE qr of SW qr	27	70	40	40.00	Do.
N half of NE qr	34	70	40	80.00	Do.
SW qr of NE qr	34	70	40	40.00	Do.
NW qr	34	70	40	160.00	Do.
NW qr of SW qr	34	70	40	40.00	Do.
92 S half of NE qr	33	70	40	80.00	Marsh.
SE qr	33	70	40	160.00	Do.
SE qr of SW qr	33	70	40	40.00	Do.
NW qr fr	3	70	41W	154.83	Do.
W half of SW qr	3	70	41	80.00	Same.
NE fr qr of NE qr	4	70	41	37.40	Overflowed to the depth 4 feet.
NW fr qr of NE qr	4	70	41	37.45	Same same.
S half of NE qr	4	70	41	80.00	Same same.
NE fr qr of NW qr	4	70	41	37.50	Same same
NW fr qr of NW qr	4	70	41	7. 5	Same same.
S half of NW qr	4	70	41	80.00	Same same.
SE qr	4	70	41	160.00	Same same.
SW qr	4	70	41	160.00	Same same.
NE fr qr of NE qr	5	70	41	37.03	Same same.
NW fr qr of NE qr	5	70	41	35.92	Same same.
S half of NE qr	5	70	41	80.00	Same same.
NE qr of NW qr	5	70	41	34.82	Same same.
NW qr of NW qr	5	70	41	33.71	Same same.
S half of NW qr	5	70	41	80.00	Same same.
SE qr	5	70	41	160.00	Same same.
SW qr	5	70	41	160.00	Same same.
NE qr of NE qr	6	70	41	33.94	Same same.
E half of SE qr	6	70	41	80.00	Same same.
W half of NW qr	10	70	41	80.00	Same same.
SW qr of NE qr	10	70	41	40.00	Same same.
93 SE qr of NW qr	10	70	41	40.00	Overerflowed to depth 4 feet.
W half of SE qr	10	70	41	80.00	Same same.
SW qr	10	70	41	160.00	Same same.

List of swamp lands, Fremont county, &c.—Continued.

Parts of section.	Sec.	Town.	R'nge.	Area.	Remarks.
All of	9	70	41	640.00	Part marsh, balance overflows to the depth of 3 feet.
All of	8	70	41	640.00	Overflows to the depth of 3 feet
E half of NE qr	7	70	41	80.00	Do do
E half of SE qr	7	70	41	80.00	Do do
NW qr of NW qr	15	70	41	40.00	Marsh.
All of	17	70	41	640.00	Overflows to the depth of 3 feet.
SE qr of NE qr	18	70	41	40.00	Same.
NE qr of SE qr	18	70	41	40.00	Same.
SW qr of SE qr	19	70	41	40.00	Same.
E half of SE qr	19	70	41	80.00	Same.
All of	20	70	41	640.00	Same.
NE qr	21	70	41	160.00	Marsh.
SE qr	21	70	41	160.00	Same.
SW qr of SW qr	22	70	41	40.00	Same.
W half of NW qr	27	70	41	80.00	Same.
NE qr	28	70	41	160.00	Same.
NW qr of SE qr	28	70	41	40.00	Same.
W half of SE qr	29	70	41	80.00	Same 4 feet.
W half of NE qr	29	70	41	80.00	Same.
NW qr	29	70	41	160.00	Same.
SW qr	29	70	41	160.00	Same.
NE qr	30	70	41	160.00	Same.
SE qr	30	70	41	160.00	
SE qr of SW qr	30	70	41	40.00	
94 E half of NE qr	31	70	41	80.00	Overflows to the depth of 2 feet.
SW qr of SE qr	31	70	41	40.00	Same.
E half of SE qr	31	70	41	80.00	Same.
NW qr	32	70	41	160.00	Same.
SW qr.	32	70	41	60.00	Same.
SW qr of SE qr.	32	70	41	40.00	Same.
E half of SE qr	32	70	41	80.00	Same.
W half of SW qr	33	70	41	80.00	Same.
SE qr of SW qr	33	70	41	40.00	Same.
S half of SE qr	33	70	41	80.00	Same.
N half of NW qr	4	69	40	64.50	Marsh.
SW qr of NW qr	4	69	40	40.00	Same.
SE qr of NE qr	5	69	40	40.00	Same.
NE qr of SE qr	5	69	40	40.00	Same.
W half of SE qr	5	69	40	80.00	Same.
S half of SW qr	5	69	40	80.00	Same.
SE qr of SE qr	5	69	40	40.00	Same.
W half of NW qr	7	69	40	87.53	Same.
NE qr of NW qr	7	69	40	40.00	Same.
N half of NE qr	7	69	40	80.00	Same.
N half of NW qr	8	69	40	80.00	Same.
NW qr of NE qr	8	69	40	40.00	Same.
SW qr	12	69	40	160.00	Overflows to the depth of 3 feet
SE qr of [illegible]W qr	12	69	40	40.00	Same.
N half of NE qr	12	69	40	80.00	Same.
95 SE qr	12	69	40	160.00	Overflows to the depth of 3 feet.
All of	13	69	40	640.00	Same.

List of swamp lands, Fremont county, &c.—Continued.

Parts of section.	Sec.	Town.	R'nge.	Area.	Remarks.
E half of NE qr	14	69	40	80.00	Overflows to the depth of 3 feet.
E half of SE qr	14	69	40	80.00	Same.
SW qr of SW qr	22	69	40	40.00	Overflows to the depth of 2 feet.
E half of SW qr	22	69	40	80.00	Same.
S half of NE qr	22	69	40	80.00	Same.
SE qr	22	69	40	160.00	Same.
S half of NW qr	23	69	40	80.00	Same.
SW qr	23	69	40	160.00	Same.
NE qr	23	69	40	160.00	Same.
SE qr	23	69	40	160.00	Same.
All of	24	69	40	640.00	Same.
W half of NE qr	25	69	40	80.00	Overflows to the depth of 2 feet.
NW qr	25	69	40	160.00	Same.
N half of SW qr	25	69	40	80.00	Same.
N half of NE qr	26	69	40	80.00	Same.
S half of SE qr	26	69	40	80.00	Same.
NW qr	26	69	40	160.00	Same.
NE qr of SW qr	26	69	40	40.00	Same.
W half of SW qr	26	69	40	80.00	Same.
All of	27	69	40	640.00	Same.
S half of NE qr	28	69	40	80.00	Same.
SE qr	28	69	40	160.00	Same.
SW qr	28	69	40	160.00	Same.
S half of NW qr	28	69	40	80.00	Overflows to the depth of 2 feet.
96 SE qr of NE qr	29	69	40	40.00	Same.
SE qr	29	69	40	160.00	Same.
SW qr	29	69	40	160.00	Same.
S half of NW qr	29	69	40	80.00	Same.
S half of NE qr	30	69	40	80.00	Same.
SE qr	30	69	40	160.00	Same.
W half of SW qr	30	69	40	91.32	Same.
NW qr	31	69	40	171.52	Same.
SW qr	31	69	40	171.84	Same.
W half of SE qr	31	69	40	80.00	Same.
W half of NE qr	31	69	40	80.00	Same.
NE qr of NE qr	31	69	40	40.00	Same.
NW qr	32	69	40	160.00	Same.
NE qr	32	69	40	160.00	Same.
SE qr	32	69	40	160.00	Same 3 feet.
NW qr	33	69	40	160.00	Overflows to the depth of 3 feet.
SW qr	33	69	40	160.00	Same.
NE qr	33	69	40	160.00	Same.
W half of SE qr	33	69	40	80.00	Same.
NE qr of SE qr	33	69	40	40.00	Same.
NW qr	34	69	40	160.00	Same.
N half of SW qr	34	69	40	80.00	Same.
NE qr	34	69	40	160.00	Same.
N half of SE qr	34	69	40	80.00	Same.
NW qr	35	69	40	160.00	Same.
W half of NE qr	35	69	40	80.00	Same.
97 NE fr of NE qr	4	69	41	36.42	Overflows to depth of 3 feet.
NW fr of NE qr	4	69	41	36.48	Same.
S half of NE qr	4	69	41	80.00	Same.
NE fr qr of NW qr	4	69	41	36.53	Same.

List of swamp lands, Fremont county, &c.—Continued.

Parts of section.	Sec.	Town.	R'ge.	Area.	Remarks.
NW fr qr of NW qr	4	69	41	36.89	Overflows to the depth of 3 feet.
S half of NW qr	4	69	41	80.00	Same.
NW qr of SW qr	4	60	41	40.00	Same.
NE fr qr of NE qr	5	69	41	36.64	Same.
NW fr qr of NE qr	5	69	41	36.68	Same.
S half of NE qr	5	69	41	80.00	Same.
SE qr	5	69	41	160.00	Same.
SW qr	5	69	41	160.00	Same.
S half of NW qr	5	69	41	80.00	Same.
NE fr qr of NW qr	5	69	41	36.72	Same.
NW fr qr of NW qr	5	69	41	36.76	Same.
NE fr qr of NE	6	69	41	36.97	Same.
NW fr qr of NE qr	6	69	41	37.35	Same, 4 feet.
S half of NE qr	6	69	41	80.00	Same.
SE qr	6	69	41	160.00	Same.
SE qr of NE qr	7	69	41	40.00	Same.
NE qr of SE qr	7	69	41	40.00	Same.
All of	8	69	41	640.00	Same.
SW qr of NW qr	9	69	41	40.00	Same.
SW qr	9	69	41	160.00	Same.
SE qr	9	69	41	160.00	Same.
SW qr of NE qr	9	69	41	40.00	Overflows to the depth 4 feet.
98 E half of NE qr	9	69	41	80.00	Same.
S half of NW qr	9	69	41	80.00	Same.
SW qr	10	69	41	160.00	Same.
S half of NE qr	10	59	41	80.00	Same.
SE qr	10	69	41	160.00	Same.
S half of NW qr	11	69	41	80.00	Same.
SW qr	11	69	41	160.00	Same.
S half of NE qr	11	69	41	80.00	Same.
SE qr	11	69	41	160.00	Same.
NW qr	12	69	41	160.00	Same.
N half of SW qr	12	69	41	80.00	Same.
NE qr	12	69	41	160.00	Same.
NW qr of SE qr	12	69	41	40.00	Same.
NW qr of NW qr	15	69	41	40.00	Same.
All of	17	69	41	640.00	Same.
NE qr	18	69	41	160.00	Same.
SE qr	18	60	41	160.00	Same.
SE qr of NW qr	18	69	41	40.00	Same.
E half of SW qr	18	69	41	80.00	Same.
E half of NW qr	19	69	41	80.00	Same.
NE qr	19	69	41	160.00	Deep swamp.
SE qr	19	69	41	160.00	Overflows to depth 4 feet.
All of	20	60	41	640.00	Same do do 2 feet.
NW qr	21	69	41	160.00	Same. Same.
SW qr	21	69	41	160.00	Same. Same.
W half of NE qr	21	69	41	80.00	Overflows to depth 2 feet.
99 SE qr	21	69	41	160.00	Same.
S half of SW qr	25	69	41	80.00	Same.
NW qr of NE qr	28	69	41	40.00	Same.
E half of NW qr	28	69	41	80.00	Same.
NW qr of NW qr	28	69	41	40.00	Same.
E half of SW qr	28	69	41	80.00	Same.
N half of NE qr	29	69	41	80.00	Same.

List of swamp lands, Fremont county, &c.—Continued.

Parts of section.	Sec.	Town.	'ge.	Area.	Remarks.
NE qr of NW qr	29	69	41	40.00	Overflows to depth 2 feet.
W half of NW qr	29	69	41	80.00	Overflows to depth 4 feet.
SW qr	29	69	41	160.00	Same.
NE qr	30	69	41	160.00	Same, 4 feet.
SE qr	30	69	41	160.00	Same.
SE qr of NW qr	30	69	41	40.00	Same.
E half of SW qr	30	69	41	80.00	Same.
NE qr	31	69	41	160.00	Same.
NE qr of SE qr	31	69	41	40.00	Same.
SE qr of SE qr	31	69	41	40.00	Same.
All of	32	69	41	640.00	Same.
NW qr	33	69	41	160.00	Same.
SW qr	33	69	41	160.00	Same.
W half of SE qr	33	69	41	80.00	Same.
All of	36	69	41	640.00	Same.
SW fr qr of NW qr	31	69	42	45.72	Same, 1 feet.
NW fr qr. of SW qr	31	69	42	45.84	Same.
SW fr qr of SW qr	31	69	42	45.45	Same.
SE qr of SW qr	31	69	42	40.00	Same.
100 W half of SW qr	9	68	40	80.00	Overflows to the depth 1 foot.
NE qr of SE qr	8	68	40	40.00	Same.
N fr half of NW qr	12	68	41	59.94	Overflows to the depth 4 feet.
N fr half of NE qr	11	68	41	56.54	Same.
S half of NE qr	11	68	41	80.00	Same.
	12	68	41	80.00	Same.
S half of SE qr	11	68	41	54.98	Same.
S half of NW qr	11	68	41	80.00	Same.
N half of SW qr	11	68	41	80.00	Same.
SW qr of SW qr	11	68	41	40.00	Same.
SE qr of NE qr	10	68	41	40.00	Same.
SE qr	10	68	41	160.00	Same.
SW qr	10	68	41	160.00	Same.
S half of SE qr	9	68	41	80.00	Same.
N fr half NE qr	8	68	41	46.24	Same.
S half of NE qr	8	68	41	80.00	Same.
NW qr of SE qr	8	68	41	40.00	Same.
SW qr	8	68	41	160.00	Same.
S half of NW qr	8	68	41	80.00	Same.
Fr N half of NW qr	8	68	41	45.44	Same.
Fr N half of NE qr	7	68	41	44.68	Same.
S half of NE qr	7	68	41	80.00	Same.
SE qr	7	68	41	160.00	Same.
SW qr	7	68	41	143.48	Same.
S half of NW qr	7	68	41	72.15	Same.
N fr half of NW qr	7	68	41	40.11	Same.
101 NE qr	13	68	41	160.00	Marsh.
NW qr of SE qr	13	68	41	40.00	Same.
SW qr of SW qr	13	68	41	40.00	Same.
N half of SW qr	13	68	41	80.00	Same.
NW qr	13	68	41	160.00	Same.
All of	14	68	41	640.00	Same.
All of	15	68	41	640.00	Overflows to the depth 3 feet.
SW qr of SE qr	17	68	41	40.00	Same.
SW qr	17	68	41	160.00	Same.
NW qr	17	68	41	160.00	Same.

List of swamp lands, Fremont county, &c.—Continued.

Parts of section.	Sec.	Town.	R'nge.	Area.	Remarks.
NE qr	18	68	41	160.00	Overflows to the depth 3 feet.
NE qr of SE qr	18	68	41	40.00	Same.
S half of SE qr	18	68	41	80.00	Same.
E half of NW qr	18	68	41	80.00	Same.
W half of NW qr	18	68	41	80.00	Same. 3 feet.
W half of SW qr	18	68	41	80.00	Same.
SE qr of SW qr	18	68	41	40.00	Same.
All of	19	68	41	602.84	Same.
NW qr	20	68	41	160.00	Same.
SW qr	20	68	41	160.00	Same.
NE qr	20	68	41	160.00	Same.
NW qr	21	68	41	160.00	Same.
N half of SW qr	21	68	41	80.00	Same.
SE qr of SW qr	21	68	41	40.00	Same.
NE qr	21	68	41	160.00	Same.
N half of SE qr	21	68	41	80.00	Same.
102 NW qr	22	68	41	160.00	Overflows to the depth 3 feet.
N half of SW qr	22	68	41	80.00	Same.
SE qr	22	68	41	160.00	Same.
NE qr	22	68	41	160.00	Overflows to the depth 4 feet.
NW qr	23	68	41	160.00	Same.
NW qr of SW qr	23	68	41	40.00	Same.
W half of NE qr	23	68	41	80.00	Same.
W half of NW qr	29	68	41	80.00	Same.
W half of SW qr	29	68	41	80.00	Same.
SE qr of SW qr	29	68	41	40.00	Same.
All	30	68	41	603.64	Same.
Fr NW qr	31	68	41	142.63	Same.
NE qr of SW qr	31	68	41	40.00	Same.
NW qr of SE qr	31	68	41	40.00	Same.
E half of SE qr	31	68	41	80.00	Same.
NE qr	31	68	41	160.00	Same.
NW qr	32	68	41	160.00	Same.
NE qr of SW qr	32	68	41	40.00	Same.
NW qr	7	68	42	106.54	Overflows to the depth 1 feet.
Fr W half of SW qr	7	68	42	77.31	Same.
All	18	68	42	635.92	Same.
W half of NW qr	17	68	42	80.00	Same.
SE qr of SE qr	13	68	42	40.00	Same.
E half of NE qr	24	68	42	80.00	Same.
SE qr	24	68	42	160.00	Same 3 feet.
103 SE qr of SW qr	24	68	42	40.00	Overflows to the depth of 3 feet.
W half of NW qr	20	68	42	80.00	Same.
NE qr	19	68	42	160.00	Deep swamp.
N half of SE qr	19	68	42	80.00	Same.
NW fr qr	19	68	42	159.89	Same.
SW fr qr	19	68	42	160.89	Marsh.
NE qr	25	68	42	160.00	Overflows to the depth of 3 feet.
SE qr	25	68	42	160.00	Same.
E half of NW qr	25	68	42	80.00	Marsh.
SW qr of NE qr	30	68	42	40.00	Same.
NW fr qr	30	68	42	161.87	Same.
SW qr	30	68	42	162.79	Same.

List of swamp lands, Fremont county, &c.—Continued.

Parts of section.	Sec.	Town.	Range.	Area.	Remarks.
Fr W half of NW qr........	31	68	42	83.30	Overflows to the depth of 3 feet.
SW fr qr	31	68	42	163.12	Same.
SE qr of NW qr.............	36	68	42	40.00	Overflows to the depth 3 feet.
SW qr of SW qr.............	36	68	42	40.00	Same.
E half of SW qr	36	68	42	80.00	Same.
SE qr	36	68	42	160.00	Same.
NE qr	36	68	42	160.00	Same.
104 Entire township......		68	43	16,751.02	This township is situated on the Missouri river bottom, & part of it is a deep swamp, & part marsh or wet land, & all of it is subject to overflow, to the depth of from one to ten feet. This entire township is rendered unfit for cultivation — there not being any legal subdivision that contains 20 acres of dry land in it.
Entire township.............		68	44	1,669.76	This township is situated on the Missouri river bottom, and is subject to overflow, to the depth of from 1 to 10 feet. It is part timber, and remainder is prairie; the entire township is unfit for cultivation — there not being any legal subdivision that is not more than overflown.
Entire township......	1	67	43	9,688.79	Same as above.
105 Lot No. 9............	1	67	42	31.95	Overflows to depth of 3 feet.
Lot No. 10	1	67	42	48.15	Same.
Lot No. 5	1	67	42	63.30	Same.
Lot No. 6	1	67	42	40.00	Same.
Lot No. 11	1	67	42	34.43	Same.
Lot No. 4	1	67	42	26.75	Same.
Lot No. 3	2	67	42	40.00	Same.
Lot No. 1	2	67	42	43.11	Same.
Lot No. 3	2	67	42	39.18	Same.
Lot No. 4	2	67	42	21.55	Same.
Lot No. 5	2	67	42	26.74	Same.
Lot No. 6	2	67	42	40.00	Same.
Lot No. 7	2	67	42	40.90	Same.
Lot No. 8	2	67	42	25.63	Same.
Lot No. 9	2	67	42	81.80	Same.
Lot No. 11	2	67	42	36.08	Same.
Lot No. 12	11	67	42	37.80	Same.
Lot No. 1	11	67	42	55.10	Same.
Lot No. 2	11	67	42	40.00	Same, 4 feet.

List of swamp lands, Fremont county, &c.—Continued.

Parts of section.	Sec.	Town.	R'ng.	Area.	Remarks.
Lot No. 3	11	67	42	25.35	Overflows to depth of 4 feet.
Lot No. 4	11	67	42	32.41	Same.
Lot No. 8	11	67	42	45.22	Same.
Lot No. 9	11	67	42	60.17	Same.
Lot No. 10	11	67	42	32.15	Same.
Lot No. 11	11	67	42	33.61	Same.
Lot No. 12	11	67	42	35.22	Same.
106 Lot No. 1	14	67	42	5.41	Overflows to the depth 4 feet.
Lot No. 2	14	67	42	34.61	Same.
Lot No. 3	14	67	42	40.00	Same.
Lot No. 4	14	67	42	57.46	Same.
Lot No. 5	14	67	42	35.38	Same.
Lot No. 6	14	67	42	40.00	Same.
Lot No. 7	14	67	42	52.05	Same.
Lot No. 8	14	67	42	52.01	Same.
Lot No. 9	14	67	42	41.83	Same.
Lot No. 10	14	67	42	67.11	Same.
SW qr of SW qr	12	67	42	40.00	Same.
Lot No. 1	13	67	42	4.01	Same.
Lot No. 1	23	67	42	10.92	Same.
Lot No. 2	23	67	42	24.40	Same.
E half of NW qr	14	67	42	80.00	Same.
E half of SE qr	15	67	42	80.00	Same.
Lot 8	22	67	42	33.12	Same.
Lot 9	22	67	42	40.00	Same.
Lot No. 10	22	67	42	51.17	Same.
Lot No. 1	26	67	42	14.85	Same.
Lot No. 2	26	67	42	59.75	Same.
Lot No. 1	27	67	42	59.27	Same.
Lot No. 2	27	67	42	42.83	Same.
Lot No. 3	27	67	42	29.58	Same.
Lot No. 4	27	67	42	40.09	Same.
Lot No. 5	27	67	42	56.36	Same.
107 Lot No. 6	27	67	42	58.11	Same.
Lot No. 7	27	67	42	37.50	Same.
SW qr of NW qr	27	67	42	40.00	Same.
W half of NW qr	27	67	42	80.00	Same.
SW qr	27	67	42	160.00	Same.
Lot No. 1	35	67	42	15.25	Same.
Lot No. 8	35	67	42	20.32	Same.
Lots Nos. 1 and 2	34	67	42	78.70	Same
S half of NE qr	6	67	42	80.00	Same.
NW fr. qr of NE qr	6	67	42	39.49	Same.
NW fr. qr	6	67	42	161.61	Same.
SW fr. qr	6	67	42	163.77	Same.
All fr	7	67	42	647.22	Same.
W half of NW qr	8	67	42	80.00	Same.
SW qr	8	67	42	160.00	Same.
S half of SE qr	8	67	42	80.00	Same.
All of	17	67	42	640.00	Same.
All of	18	67	42	646.10	Same.
All of	19	67	42	643.52	Same.
All of	20	67	42	640.00	Same.
NW qr	21	67	42	160.00	Same.
SW qr	21	67	42	160.00	Same.
SE qr	21	67	42	160.00	Same.
SE qr of E qr	21	67	42	40.00	Same.
108 Lot No 5	22	67	42	40.00	Overflows to depth of 3 feet.

List of swamp lands, Fremont county, &c.—Continued.

Parts of section.	Sec.	Town.	R'ng.	Area.	Remarks.
All of	28	67	42	640.00	Overflows to depth of 3 feet.
All of	29	67	42	640.00	Same.
All of fr	30	67	42	641.64	Same.
Lots 1, 2, and 3	31	67	42	78.21	Same.
Lots No. 1 and 2	32	67	42	81.58	Same.
Lots Nos. 1 and 2	33	67	42	79.52	Same.

109 UNITED STATES LAND OFFICE, *Council Bluffs, Iowa.*

I, Frank Street, register of the local (United States) land office at Council Bluffs, Iowa, do hereby certify that the foregoing, on pages marked 1 to 18 inclusive, are true extracts from the list of swamp and overflowed lands in this district reported to this office by the surveyor general for the State of Iowa, and which was received and filed in this office on the 23d day of October. 1854, and that the said foregoing is a full, true and correct copy of all that part of said list reported as aforesaid which contains and describes lands situated and selected for the county of Fremont, in said State.

And I further certify that the following is a full, true and correct copy of the certificate of the surveyor general, which is endorsed upon the said list reported by him and filed in this office as aforesaid, to wit:

"SURVEYOR GENERAL'S OFFICE,
Dubuque, Sept. 20th, 1854.

"I, Warner Lewis, surveyor general of the State of Iowa, 110 do hereby certify that the foregoing list marked No. 3 is a correct transcript of the original list of selections made by the county surveyor or State locating agents; that the same has been carefully compared with the field-notes, plats, and other evidences on file in this office; and by the affidavits of the said county surveyor or state locating agents it appears that the greater part of each smallest legal subdivision of the land embraced in said list is swampy or subject to such overflow as to render it unfit for cultivation and is therefore of the character contemplated by the act of 28th of Sept., 1850.

"WARNER LEWIS, *Sur. Gen'l.*"

And I further certify that the several tracts of land described in said lists were properly noted on the tract books in this office, and withdrawn from market in pursuance of the order of the Commissioner of the General Land Office as contained in his letter dated September 30, 1854, of which said letter I certify that the following is a full, true, and correct copy, to wit:

111 "GENERAL LAND OFFICE, *September 30th*, 1854.

"Register and Receiver, Kanesville, Iowa:

"GENTLEMEN: You will please on receipt from the surveyor general of the list of swamp and overflowed lands selected for the

State of Iowa, in your district, note each tract therein embraced in its proper place on your tract books in pencil and decline to permit any entries or locations upon any part of the same.

"Very respectfully your obd't serv't,

"JOHN WILSON, *Commissioner.*"

All of which appears of record in this office.

In testimony whereof, I have hereunto set my hand officially, this 24th day of April, 1865.

FRANK STREET, *Register.*

[Int. Rev. 24, 1865.]

112 Endorsed: 1st list of swamp lands, certified by register U. S. Land Office, at Council Bluffs. "B," Filed Sept. 2d, 1865. J. L. Mitchell, clerk.

113 *List of swamp and overflown lands lying in the county of Fremont, State of Iowa, selected and returned by Benjamin Rector, State agent, under the authority of Frederick Rector, county judge in and for said county, and according to an act of the general assembly of the State of Iowa approved Jan'y 13th,* 1853.

[1st list certified by Sur. General.]

Parts of section.	Sec.	Town.	R'ng.	Acres.	Remarks.
114			W		
All of	3	69	43	610.84	Marsh.
Do	4	do	do	613.72	Do
Do	5	do	do	621.24	Do
SE qr of NE qr	6	do	do	40	Do and timber.
Lot No 1	do	do	do	55.75	Do do
Do 2	do	do	do	55.30	Do do
Do 3	do	do	do	32.60	Do do
Do 4	do	do	do	63.20	Do do
Do 5	do	do	do	49.90	Do do
Lot No. 1	7	do	do	44.45	Do do
Do 2	do	do	do	43.40	Do do
Do 3	do	do	do	41.90	Do do
Do 4	do	do	do	37.60	Do do
All of	8	do	do	640	Do
Do	9	do	do	640	Do
Do	10	do	do	640	Do
W half	11	do	do	320	Do
SE qr	do	do	do	160	Do
W half of NE qr	do	do	do	80	Do
SW qr of SW qr	2	do	do	40	Do
115 W half of NE qr.	14	69	43	80	Marsh.
SE qr of NE qr	do	do	do	40	Do
SE qr	do	do	do	160	Do
West half	do	do	do	320	Do
All of	15	do	do	640	Do
Do	17	do	do	640	Do
Lot No. 1	18	do	do	38.50	Overflows.
Do 2	do	do	do	43.70	Do
Do 3	do	do	do	61.25	Do
Do 4	do	do	do	41.87	Do
SE qr of SE qr	do	do	do	40	Do
Lot No. 1	19	do	do	32.15	Do
Do 2	do	do	do	52.85	Do

List of swamp lands, &c.—Continued.

Parts of section.	Sec.	Town.	R'ng.	Acres.	Remarks.
			W		
SE qr of NW qr	19	69	43	40.00	Overflows.
SW qr	do	do	do	167.60	Do
E half	do	do	do	320	Do
All of	20	do	do	640	Marsh.
Do	21	do	do	640	Do
Do	22	do	do	640	Do
West half	23	do	do	320	Do
NE qr	do	do	do	160	Do
W half of SE qr	do	do	do	80	Do
NE qr of SE qr	do	do	do	40	Do
W half of NW qr	24	do	do	80	Do
W half of SE qr	25	do	do	80	Do
West half	do	do	do	320	Do
116 All of	26	69	43	640	Marsh.
Do	27	do	do	640	Do
Do	28	do	do	640	Do
Do	29	do	do	640	Do
Do	30	do	do	656.20	Do
Do	31	do	do	660.60	Do
Do	32	do	do	640	Do
Do	33	do	do	640	Do
Do	34	do	do	640	Do
Do	35	do	do	640	Do
Do	36	do	do	640	Do
Do	--	69	44	3,041.61	Overflows timber.
Lot No. 3	2	70	43	31.65	Marsh.
Do 4	do	do	do	65.80	Do
Do 5	do	do	do	35.60	Do
SW qr of SW qr	do	do	do	40	Do
Lot No 1	3	do	do	63.38	Do
Do 2	do	do	do	39.99	Do
SW qr of NE qr	do	do	do	40	Do
NW qr	do	do	do	150.45	Do
S half	do	do	do	320.00	Do
All of	4	do	do	613.40	Do
NE qr of NE qr	5	do	do	32.40	Overflows timber.
SE qr of NE qr	5	do	do	40.00	Do do
E half of SE qr	do	do	do	80	Do do
SW qr of SE qr	do	do	do	40	Do do
117 Lot No. 1	5	70	43	49.80	Overflows, timber.
Do. 2	do	do	do	63.84	Do. do.
Do. 3	do	do	do	68	Do. do.
Do. 4	do	do	do	32.25	Do. do.
Lot No. 1	7	do	do	56.20	Do. do.
Do. 2	do	do	do	24.65	Do. do.
Do. 3	do	do	do	52.30	Do. do.
SE qr of SE qr	do	do	do	40	Do. do.
Lot No. 1	8	do	do	39.55	Do. do.
Do. 2	do	do	do	54.50	Do. do.
SE qr of NW qr	do	do	do	40	Do. do.
SW qr	do	do	do	160	Do. do.
East half	do	do	do	320	Do. do.
All of	9	do	do	640	Marsh.
Do.	10	do	do	640	Do.
W half	11	do	do	320	Do.
NW qr	14	do	do	160	Do.
W half of SW qr	do	do	do	80	Do.
All of	15	do	do	640	Do.

List of swamp lands, &c.—Continued.

Parts of section.	Sec.	Town.	R'ng.	Acres.	Remarks.
			W.		
All of	17	70	43	640	Marsh.
East half	18	do	do	320	
Lot No. 1	do	do	do	28.74	Overflows, timber.
Do. 2	do	do	do	50	Do. do.
Do. 3	do	do	do	57.60	Do. do.
Do. 4	do	do	do	62.54	Do. do.
Lot No. 1	19	do	do	31.86	Do. do.
Do. 2	do	do	do	39.00	Do. do.
118 Lot No. 3	19	70	43	44.80	Overflows, timber.
Do. 4	do	do	do	51.10	Do. do.
E half of NW qr	do	do	do	80	Do. do.
E half of SW qr	do	do	do	80	Do. do.
East half	do	do	do	320	Do. do.
All of	20	do	do	640	Do. do.
Do.	21	do	do	640	Marsh.
Do.	22	do	do	640	Do.
Do.	27	do	do	640	Do.
Do.	28	do	do	640	Do.
Do.	29	do	do	640	Do.
East half	30	do	do	320	Overflows, timber.
E half of NW qr	do	do	do	80	Do. do.
E half of SW qr	do	do	do	80.00	Do. do.
Lot No. 1	do	do	do	59.00	Do. do.
Lot No. 2	do	do	do	71.00	Do. do.
Do. 3	do	do	do	68.82	Do. do.
Do. 4	do	do	do	53.08	Do. do.
Lot No. 1	31	do	do	36.20	Do. do.
Do. 2	do	do	do	29.28	Do. do.
Do. 3	do	do	do	64.40	Do. do.
Do. 4	do	do	do	55.13	Do. do.
E half of NW qr	do	do	do	80.	Do. do.
East half	do	do	do	320.	Do. do.
All of	32	do	do	640.	Marsh.
Do.	33	do	do	640.	Do.
Do	34	do	do	640.	Do.
119 N half of NW qr	35	70	43	80	Marsh.
SW qr of SW qr	26	do	do	40	Do.
S half of NW qr	8	68	40	80	Do.
SW qr	do	do	do	160	Do.
SE qr	7	do	do	160	Do.
S half of NE qr	do	do	do	80	Do.
E half of SW qr	do	do	do	80	Do.
SW qr of SW qr	do	do	do	38.03	Do.
N half	18	do	do	315.77	Do.
N half of NW qr	17	do	do	80	Do.

I, Benjamin Rector, locating agent of Fremont county, State of Iowa, do solemnly swear that I understand and have examined the lines bounding the tracts of land particularly designated in the lists hereunto affixed; and I do further solemnly swear that each quarter [quarter] section of the lands designated in said lists are swamp and overflowed lands, and of the character embraced by the law of Congress approved Sept. 28, 1850.

BENJAMIN RECTOR,
Selecting Agent.

Subscribed and sworn to before me this March the 20th, A. D. 1850. In witness whereof, I have hereunto set my hand and affixed the seal of my office, at office in Sydney, this March the 20th, A. D. 1856.

[L. S.] ELIAS FINDLEY,
District Cl'k of Fremont County, Iowa.

120 SURVEYOR GENERAL'S OFFICE,
Dubuque, Iowa, Feb. 8th, 1865.

I, Henry A. Wiltse, surveyor general, hereby certify that the foregoing transcript of the list of swamp land selection in Fremont county, Iowa, is a true and correct copy of the original list on file in this office.

HENRY A. WILTSE,
Surveyor General.

[Int. rev., Feb. 8, 1865. H. A. W.]

121 GENERAL LAND OFFICE, *January* 19*th*, 1865.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the following are true extracts as hereinafter most particularly stated, on page , to wit:

Extract No. 1.—*List of swamp lands in the Missouri river land district, Iowa.*

[2nd list certified from General Land Office.]

Parts of section.	Sec.	Town.	R'ng.	Area.	Remarks.
	*	*	*	* *	
	*	*	*	* *	
	*	*	*	* *	
	*	*	*	* *	
All of fr	3	69	43	610. 84	Marsh.
Do do do	4	69	43	613. 72	Do
Do do do	5	69	43	621. 24	Do
SE qr of NE qr	6	69	43	40	Do Timber.
Lot No. 1	6	69	43	55. 75	Do do
Do do 2	6	69	43	55. 30	Do do
Do do 3	6	69	43	32. 60	Do do
Do do 4	6	69	43	63. 20	Do do
Do do 5	6	69	43	49. 90	Do do
Lot No. 1	7	69	43	44. 45	Do do
Do do 2	7	69	43	43. 40	Do do
Do do 3	7	69	43	41. 90	Do do
Do do 4	7	69	43	37. 60	Do do
All of	8	69	43	640	Do do
Do do	9	69	43	640	Do do
Do do	10	69	43	630	Do do
122 W half	11	69	43	320	Marsh, timber.
SE qr and W half of NE qr	11	69	43	240	Do do
SW qr of SW qr	2	69	43	40	Do do
W half of NE qr	14	69	43	80	Do do
SE qr of NE qr	14	69	43	40	Do do
SE qr	14	69	43	160	Do do
W half	14	69	43	320	Do do
All of	15	69	43	640	Do do
Do do	17	69	43	640	Do do
Lot No. 1	18	69	43	38. 50	Overflows.
Do do 2	18	69	43	43. 70	Do
Do do 3	18	69	43	61. 25	Do
Do do 4	18	69	43	41. 87	Do
SE qr of SE qr	18	69	43	40	Do
Lot No 1	19	69	43	32. 15	Do
Do do 2	19	69	43	52. 85	Do
SE qr of NW qr	19	69	43	40	Do
SW fr qr	19	69	43	167. 60	Do
E half	19	69	43	320. 00	Do
All of	20	69	43	640	Marsh.
Do	21	69	43	640	Do
Do	22	69	43	640	Do
W half	23	69	43	320	Do
NE qr	23	69	43	160	Do
W half of SE qr	23	69	43	80	Do
NE qr of SE qr	23	69	43	40	Do
W half of NW qr	24	69	43	80	Do
W half of SE qr	25	69	43	80	Do
123 W half	25	69	43	320	Marsh.

List of swamp lands, &c.—Continued.

Parts of section.	Sec.	Town.	R'ng.	Acres.	Remarks.
All of	26	69	43	640	Marsh
Do	27	69	43	640	Do
Do	28	69	43	640	Do
Do	29	69	43	640	Do
All of fr	30	69	43	656.20	Do
Do do	31	69	43	660.60	Do
All of	32	69	43	640	Do
Do	33	69	43	640	Do
Do	34	69	43	640	Do
Do	35	69	43	640	Do
Do	36	69	43	640	Do
All of frt township		69	44	3,042.21	Overflows, timber.
Lot No. 3	2	70	43	31.65	Marsh.
Do 4	2	70	43	65.80	Do
Do 5	2	70	43	35.60	Do
SW qr of SW qr	2	70	43	40	Do
Lot No 1	3	70	43	63.38	Do
Do 2	3	70	43	39.99	Do
SW qr of NE qr	3	70	43	40	Do
NW fr qr	3	70	43	150.45	Do
S half	3	70	43	320	Do
All of	4	70	43	613.40	Do
NE qr of NE qr	5	70	43	32.40	Overflows, timber.
SE qr of NE qr	5	70	43	40	Do do
E half of SE qr	5	70	43	80	Do do
SW qr of SE qr	5	70	43	40	Do do
124 Lot No. 1	5	70	43	49.80	Overflows timber.
Do 2	5	70	43	63.84	Do. do.
Do 3	5	70	43	68.00	Do. do.
Do 4	5	70	43	32.25	Do. do.
Do 1	7	70	43	56.20	Do. do.
Do 2	7	70	43	24.65	Do. do.
Do 3	7	70	43	52.30	Do. do.
SE qr of SE qr	7	70	43	40.	Do. do.
Lot No. 1	8	70	43	39.55	Do. do.
Do 2	8	70	43	54.50	Do. do.
SE qr of NW qr	8	70	43	40.	Do. do.
SW qr	8	70	43	160.	Do. do.
E half	8	70	43	320.	Do. do.
All of	9	70	43	640.	Marsh.
Do	10	70	43	640.	Do.
West half	11	70	43	320.	Do.
NW qr	14	70	43	160.	Do.
W half of SW qr	14	70	43	80.	Do.
All of	15	70	43	640.	Do.
Do	17	70	43	640.	Do.
East half	18	70	43	320.	Do.
Lot No. 1	18	70	43	28.74	Do.
Do 2	18	70	43	50.	Overflows timber.
Do 3	18	70	43	57.60	Do. do.
Do 4	18	70	43	62.54	Do. do.
Do 1	19	70	43	31.86	Do. do.
Do 2	19	70	43	39.	Do. do.
Do 3	19	70	43	44.80	Do. do.
125 Lot No. 4	19	70	43	51.10	Overflowed timber
E half of NW qr	19	70	43	80.	Do. do.
E half of SW qr	19	70	43	80.	Do. do.
East half	19	70	43	320.	Do. do.

List of swamp lands, &c.—Continued.

Parts of section.	Sec.	Town.	R'ng.	Area.	Remarks.
All of	20	70	43	640.	Do. do.
All of	21	70	43	640.	Do. do.
Do	22	70	43	640.	Do. do.
Do	27	70	43	640.	Do. do.
All of	28	70	43	640.84	Overflowed timber.
Do	29	70	43	640.	Do. do.
East half	30	70	43	320.	Overflowed timber.
E half of NW qr	30	70	43	80.	Do. do
E half of SW qr	30	70	43	80.	Do. do.
Lot No. 1	30	70	43	59.	Do. do.
Do 2	30	70	43	71.	Do. do.
Do 3	30	70	43	68.82	Do. do.
Do 4	30	70	43	53.08	Do. do
Do 1	31	70	43	36,20	Do. do
Do 2	31	70	43	29.28	Do. do.
Do 3	31	70	43	64.40	Do. do.
Do 4	31	70	43	55.13	Do. do.
E half of NW qr	31	70	43	80.	Do. do.
E half	31	70	43	320.	Do. do
All of	32	70	43	640.	Marsh.
Do	33	70	43	640.	Do.
All of	34	70	43	640.	Do.
N half of NW qr	35	70	43	80.	Do.
SW qr of SW qr	26	70	43	40.	Do.
126 S half of NW qr	8	68	40	80.	Marsh.
SW qr	8	68	40	160.	Do.
SE qr	7	68	40	160.	Do.
S half of NE qr	7	68	40	80.	Do.
E half of SW qr	7	68	40	80.	Do.
Fr SW qr of SW qr	7	68	40	38.03	Do.
N fr half	18	68	40	315.77	Do.
N half of NW qr	17	68	40	80.	Do.
	*	*	*	*	
	*	*	*	*	
	*	*	*	*	
	*	*	*	*	
	*	*	*	*	

SURVEYOR GENERAL'S OFFICE,
Dubuque, Jan'y 8th, 1857.

I, Warner Lewis, surveyor general of the State of Iowa, do hereby certify that the foregoing list marked No. 3 is a correct transcript of the original lists of selections made by the county surveyor or State locating agents; that the same has been carefully compared with the field notes, plats, and other evidence on file in this office, and by the affidavit of said county surveyor or State locating agent it appears that the greater part of each smallest legal subdivision of the land embraced in said list is swampy, or subject to such overflow as to render the same unfit for cultivation, and is therefore of the character contemplated by the act of 28th Sept., 1850.

WARNER LEWIS,
Surveyor General.

[End of extract No. 1.]

127 The foregoing being true extracts from the report, dated January 8th, 1857, of the surveyor general of the State of Iowa, of swamp land selections, under color of the act of Congress approved Sept. 28, 1850, which report was filed in this office on the 21st day of January, 1857.

And I further hereby certify that of the tracts above described being in odd numbered sections, the following being a true extract from the original list on the files of this office, having been brought to the test of the official field notes, and other data as required by the decision of the Secretary of the Interior of the 8th of February, 1860, (certified copy B herewith,) were found not to be swamp, and accordingly were rejected by the Commissioner of the General Land Office under date Oct. 25th, 1861.

Swamp land rejections.

Parts of section.	Sec.	Town.	R'ng.	Area.	
◦	◦	◦	◦	◦	
◦	◦	◦	◦	◦	
◦	◦	◦	◦	◦	
W half of NE qr and E half of NW qr	3	69	43	145.42	
E half of sec, E half of SW qr and SE qr of NW qr	5	69	43	429.30	
◦	◦	◦	◦	◦	
W half of sec	3	70	43	310.45	
Lots 1, 2, 3, 4, NE qr of NE qr, E half of SE qr, and SW qr of SE qr	5	70	43	302.45	
S half of sec, W half of NW qr, SE qr of NW qr E half of NE qr, and SW qr of NE qr	9	70	43	560.	
128 W half of sec	11	70	43	320.	
S half of sec, S half of NE qr, and S half of NW qr	15	70	43	480.	
NW qr and SE qr, and SW qr of NE qr	17	70	43	360.	
E half of SW qr, and NW qr of SW qr	17	70	43	120.	
Lot No. 3	19	70	43	44.80	
NW qr SE qr and E half of NE qr	21	70	43	400.	
N half of sec, S half of SE qr, and S half of SW qr	27	70	43	480.	
E half of sec, W half of NW qr, and W half of SW qr	29	70	43	480.	
S half of sec, E half of NE qr, and NE qr of NW qr	31	70	43	399.53	
W half of sec, SE qr, and W half of NE qr	33	70	43	560.	
	◦	◦	◦	◦	
	◦	◦	◦	◦	
	◦	◦	◦	◦	

Compared with original list of sections Jan'y 4, 1864.

T. CROMWELL.

And I further hereby certify that these said tracts were subsequently certified to the State of Iowa as railroad lands, according to a verified transcript certified under date of the 14th of March, 1862, and sent to the governor of that State, which said certified transcript has vested the title to said land in virtue of the act of the 3d of August, 1854, U. S. Statutes, vol. 10, page 346, in the said State, under the grant of 15th May, 1856.

* * * * *

Copy of said certificate with the approval hereto attached, marked "A."

129 "A."

GENERAL LAND OFFICE,
March 14*th*, 1862.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to four inclusive, is a true and correct list of the tracts of land selected by the agent of the State of Iowa outside of the six and within the fifteen mile limits under the act of Congress approved the 15th of May, 1856, entitled An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State.

The said selections being from the lands of the United States in the alternate sections designated by the odd numbers most contiguous to the tier of sections within six section in width on each side of the railroad "from Burlington, on Mississippi river, to a point on the Missouri river, near the mouth of the Platte river," known as "the Burlington and Missouri River Railroad, and being in lieu of the land in the alternate sections designated by odd numbers within said six sections in width on each side of the said railroad, which the United States had legally sold, or to which the right of pre-emption had legally attached, prior to the period at which the rights of the State inured under said grant, and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of the 15th of May, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing lists.

130 In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed at the city of Washington, on the day and year hereinabove written.

(Signed) J. M. EDMUNDS,
Commissioner.

DEPARTMENT OF THE INTERIOR,
March 21*st*, 1862.

Approved, subject to the conditions and rights above mentioned.

(Signed) CALEB B. SMITH, *Secretary.*

131 And I hereby further certify that of the tracts described in the report of swamp land selections made by the surveyor general, on the said 8th day of January. 1857, the following tracts and certified to the State of Iowa, under date June 20th, 1859, as enuring to the State as swamp land, the approval thereof as swamp having been made by the Secretary of the Interior, on the 25th of Feb'y, 1859, to wit:

Parts of section.	Sec.	Town.	R'ng.	Acres.
S half of sec	3	69	43	320
All of fr sec	4	69	43	612
SE qr of NE qr	6	69	43	40
Lots 1, 2, 3, 4 and 5	6	69	43	256.75
Lots 1, 2, 3 and 4	7	69	43	167.35
All of sec	8	69	43	640
Do	9	69	43	640
Do	10	69	43	640
NW qr W half SW qr and SE qr of SW qr	11	69	43	280
S half of SE qr	11	69	43	80
W half of NE qr	11	69	43	80
W half of NE qr and SE qr of NE qr	14	69	43	120
SE qr	14	69	43	160
W half of sec	14	69	43	320
All of sec	15	69	43	640
Do	17	69	43	640
Lots 1, 2, 3, 4 and SE qr of NE qr	18	69	43	225.32
Lots 1, 2 SE qr of NW qr and SW fr qr	19	69	43	292.60
E half of sec	19	69	43	320
132 All of sec	20	69	43	640
Do	21	69	43	640
All of sec	22	69	43	640
W half of sec	23	69	43	320
NE qr	23	69	43	160
W half of SE qr and NE qr of SE qr.	23	69	43	120
W half of NW qr	24	69	43	80
W half of SE qr and W half of sec	25	69	43	400
All of sec	26	69	43	640
Do	27	69	43	640
Do	28	69	43	640
E half of sec and SW qr	29	69	43	480
E half of NE qr W fr half of NW qr and SW fr qr	30	69	43	336.20
All of fr sec	31	69	43	660.60
All of sec	32	69	43	640
All of sec	33	69	43	640
Do	34	69	43	640
Do	35	69	43	640
Do	36	69	43	640
Lots 4, 5 and SW qr of SW qr	2	70	43	141.40
NE fr qr SE qr of NW qr NE qr of SW qr S half of SW qr and SE qr	4	70	43	387.65
Lot 2 E half of NE qr and SW qr	8	70	43	294.50
NW qr	14	70	43	160
The whole of sec	10	70	43	640

Swamp lands.—Continued.

Parts of section.	Sec.	Town.	R'ng.	Acres.
W half of SE qr and NE qr of SE qr	18	70	43	120
Lots 1, 2 and 3	18	70	43	136. 34
All of sec	20	70	43	640
133 NE qr of NE qr NW qr W half of NE qr SW qr and SE qr of SE qr	22	70	43	480
SW qr of SW qr	26	70	43	40
All of sec	28	70	43	640
E half of sec	30	70	43	320
E half of SW qr	30	70	43	80
Lots 3 and 4	30	70	43	121. 90
All of sec	32	70	43	640
N half of NE qr NW qr and SW qr	34	70	43	400
F'rt sec	13	69	44	8. 38
Do	23	69	44	68. 85
Lots 1, 2 and SE qr	24	69	44	257. 19
NW qr and SE qr	25	69	44	320
E half of NE qr and lots 1 and 2.	26	69	44	172. 40
E half of NE qr NW qr of SE qr and E half of SE qr	35	69	44	200
E half of NE qr NW qr of NE qr NW qr SW qr E half of SE qr	36	69	44	520

134 In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and years above noted.

[L. S.] J. M. EDMUNDS,
Commissioner of the Gen'l Land Office.

[Int. rev., Jan. 19, 1865, J. A. H.]

135 B.

DEPARTMENT OF THE INTERIOR,
Washington, Feb'y 8th, 1860.

SIR: In reply to your communication of the 4th and report of the 21st ultimo, relative to swamp selections in Louisiana, which conflict with railroad grant, I have to state that it appears to me that my decision of the 23d of July last, furnishes a rule for the action of your office in cases of conflict, wherein the swamp selections have been made and reported to your office prior to the 3d day of March, 1857.

It is true that in my letter of the 12th August, 1858, I approved the suspension of action upon case of conflict in Louisiana, where land that had been embraced in swamp lists that were on file on the 3d of March, 1857, were found also to lie within railroad grants which had vested prior to that date, until the General Land Office could determine whether such lands ought to be certified to the State under the railroad grant of 3d of June, 1856, or the swamp grant. This may

have been regarded as looking to an investigation into the
136 question of the swampy or dry condition of the land on the
28th Sept., 1850, or the 2d March, 1849, but as case after case arose, and delay in carrying out the conflicting grants appeared to threaten greater evils than those likely to arise from mistakes, in my letter of the 23d of July last, I informed you in substance, in reference to swamp selection on your files on the 3d of March, 1857, that if a title under a railroad grant had not prior to that date, my opinion was that Congress, by the act of that date, had decided that the title should pass under the swamp grant; on the other hand, if the title under the railroad grant had vested prior to that date, the land office might proceed to decide as to the swampy character of the land, upon the field-notes of the surveys and the papers on file and of record on the 3d of March, and of the claim of the State under the older grant was satisfactorily established, to affirm the title under that grant; but if the swamp claim was not satisfactorily sustained, to certify the title under the railroad grant.

The conflict which existed on the 3d of March, 1857, we
137 were compelled to settle according to the law of that date,
but that law is retrospective (only) in its operation since that date; we are left administer the swamp and railroad grants solely under the laws making them, and as the swamp selections are made under the direction and supervision of the department, and approved by the Secretary of the Interior, it is clearly within our authority to adopt such a policy or course of action in the administration of the grants as will give effect to the laws of the United States, prevent embarrassments in conducting the business of the General Land Office, and most effectually do justice to the States interested.

Confining the following remarks to cases wherein the claim under the swamp grants is based on selections made and reported to the General Land Office on or subsequent to the 3d of March, 1857, I would remark :

First. In cases in which the swamp selection has been made and reported prior to the definite location of railroad route, and the lands fall within the six-miles limits of the line of road, your office should proceed in the usual and regular manner, and determine, from
138 the records and files of the General Land Office whether the
tracts did pass to the State under the swamp grant. Should you decide in the affirmative, the title to the selected tracts should be completed under the swamp grant, but if you are not warranted in making such affirmative decision, the swamp claim may be rejected and the title certified to the State under the latter but more specific grant.

Second. In that class of cases in which a title to the lands within the six-miles limits of a railroad line has vested in a State under a railroad grant, the surveyor general should not thereafter admit or report selection of the same tracts as swamp lands.

The swamp grant may be indeed the earlier, but the railroad grant is more specific—the title under it has become fully vested, and it should be fully recognized, even if the land was of such description as to fall under the swamp grants of 1849 or 1850.

The effect of the later grant is at most only to change the use for which the grantee receives the land. I will not call in question
139 the power of Congress to make that change. When the State accepts the later grant, and proceeds to complete her title under it, she has assented to the change, and both the grantor and grantee appear to be concluded by their voluntary yet concurrent action.

Third. When lands lie between the six and fifteen-miles limits of a located railroad, but have never been listed and approved to the State under the provision of the said road grant, so as to vest that title, and the same lands fall within the description granted in 1849 and 1850 for drainage and lever purposes, the State appears to have the right to claim title under either grant; and if she is so claiming under both, I think we may examine the claim under the older grant, and if that be satisfactory, approve and pattent the land; but if not satisfactory, reject the same and proceed uuder the later grant.

After indemnity lists have been approved and transmitted to the State authorities, the lands therein are no longer liable to selection or report as swamp lands, and any selection that may have
140 been made thereof may be rejected. When the department has fully executed one grant, its officers should cease all action under another grant of the same land to the same grantee.

And where lands between the six and fifteen-miles limits of a railroad which has been located are by executive order withheld from pre-emption and ordinary private entry, in order to facilitate the adjustment of a grant to a State for railroad purposes, I think that the State authorities, from respect to the action of the State as well as that of the United States, ought to waive any right which she may have to make selections of the withheld tracts under the swamp grants.

Should any State persist in that policy, and bring thus upon your office the evils which were sought to be avoided by the withdrawal of the lands, it may be a question whether the withdrawals of such lands within her limits should not be removed, and the lands left in market whilst the adjustment of the railroad grant is progressing.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

The COMMISSIONER *of the Land Office.*

Endorsed: 2nd selections swamp lands. Filed in Gen. Land Office Jan. 21st, 1857. Certified by Com'r Gen. L. O. "F." Filed Sept. 2nd, 1865. Clerk.

141 *A list of swamp and overflowed lands reported by the surveyor general to the land office at Council Bluffs.*

[2nd list. Certified from land office at Council Bluffs.]

Parts of section.	Sec.	Town.	R'ng.	Acres.	Remarks.
142 All of	3	69	43W	610.84	Marsh.
All of	4	do	do	613.72	Do.
All of	5	do	do	621.24	Do and timber.
SE qr of NE qr	6	do	do	40	Do do
Lot No. 1	do	do	do	55.75	Do do
Do 2	do	do	do	55.30	Do do
Do 3	do	do	do	32.60	Do do
Do 4	do	do	do	63.20	Do do
Do 5	do	do	do	49.90	Do do
Lot No. 1	7	do	do	44.45	Do do
Do 2	do	do	do	43.40	Do do
Do 3	do	do	do	41.90	Do do
Do 4	do	do	do	37.60	Do do
All of	8	do	do	640	Do
Do	9	do	do	640	Do
Do	10	do	do	640	Do
West half	11	do	do	320	Do
SE qr	do	do	do	160	Do
W half of NE qr	do	do	do	80	Do
SW qr of SW qr	2	do	do	40	Do
W half of NE qr	14	do	do	80	Do
SE qr of NE qr	do	do	do	40	Do
SE qr	do	do	do	160	Do
West half	do	do	do	320	Do
All of	15	do	do	640	Do
All of	17	do	do	640	Do
143 Lot No. 1	18	69	43	38.50	Overflows.
" 2	do	do	do	43.70	Do
Lot No. 3	do	do	do	61.25	Do
" 4	do	do	do	41.87	Do
SE qr of SE qr	do	do	do	40	Do
Lot No. 1	19	do	do	32.15	Do
" 2	do	do	do	52.85	Do
SE qr of NW qr	do	do	do	40.00	Do
SW qr	do	do	do	167.60	Do
E half	do	do	do	320	Do
All of	20	do	do	640	Marsh.
Do	21	do	do	640	Do
Do	22	do	do	640	Do
W half	23	do	do	320	Do
NE qr	do	do	do	160	Do
W half of SE qr	do	do	do	80	Do
NE qr of SE qr	do	do	do	40	Do
W half of NW qr	24	do	do	80	Do
W half of SE qr	25	do	do	80	Do
W half	do	do	do	320	Do
All of	26	do	do	640	Do
Do	27	do	do	640	Do
Do	28	do	do	640	Do
Do	29	do	do	640	Do
All of	30	do	do	656.20	Do
144 Do	31	do	do	660.60	Do
All of	32	69	42	640	Marsh.
All of	33	do	do	640	Do
"	34	do	do	640	Do
"	35	do	do	640	Do
"	36	do	do	640	Do

List of swamp lands, Fremont county—Continued.

Parts of section.	Sec.	Town.	R'ng.	Acres.	Remarks.
All of	—	69	44	3,041.61	Overflows, timber.
Lot No. 3	2	70	43	31.65	Marsh.
Do 4	do	do	do	65.80	Do
Do 5	do	do	do	35.60	Do
SW qr of SW qr	do	do	do	40	Do
Lot No. 1	3	do	do	63.38	Do
Do 2	do	do	do	39.99	Do
SW qr of NE qr	do	do	do	40	Do
NW qr	do	do	do	150.45	Do
S half	do	do	do	320	Do
All of	4	do	do	613.40	Do
NE qr of NE qr	5	do	do	32.40	Overflows, timber.
SE qr of NE qr	do	do	do	40	Do do
E half of SE qr	do	do	do	80	Do do
SW qr of SE qr	do	do	do	40	Do do
Lot No. 1	5	do	do	49.80	Do do
Do 2	do	do	do	63.84	Do do
Do 3	do	do	do	68	Do do
Do 4	do	do	do	32.25	Do do
Lot No. 1	7	do	do	56.20	Do do
Do 2	do	do	do	24.65	Do do
145 Lot No. 3	7	70	43	52.30	Overflows, timber.
SE qr of SE qr	7	do	do	40	Do do.
Lot No. 1	8	do	do	39.55	Do do.
Do 2	8	do	do	54.50	Do do.
SE qr of NW qr	do	do	do	40	Do do.
SW qr	do	do	do	160	Do do.
E half	do	do	do	320	Do do.
All of	9	do	do	640	Marsh.
Do	10	do	do	640	Do.
West half.	11	do	do	320	Do.
NW qr	14	do	do	160	Do.
W half of SW qr	do	do	do	80	Do.
All of	15	do	do	640	Do.
Do	17	do	do	640	Do.
E half	18	do	do	320	Do.
Lot No. 1	do	do	do	28.74	Overflows, timber.
Do 2	do	do	do	50	Do do
Do 3	do	do	do	57.60	Do do
Do 4	do	do	do	62.54	Do do
Lot No. 1	19	do	do	31.86	Do do
Do 2	do	do	do	39	Do do
Do 3	do	do	do	44.80	Do do
Do 4	do	do	do	51.10	Do do
E half of NW qr	do	do	do	80	Do do
E half of SW qr	do	do	do	80	Do do
E half	do	do	do	320	Do do
146 All of	20	do	do	640	Overflows, timber.
Do	21	do	do	640	Marsh.
Do	22	do	do	640	Do.
Do	27	do	do	640	Do.
Do	28	do	do	640	Do.
Do	29	do	do	640	Do.
East half	30	do	do	320	Overflows, timber.
E half of NW qr	do	do	do	80	Do do.
E half of SW qr	do	do	do	80	Do do.
Lot No. 1	do	do	do	59	Do do.
Do 2	do	do	do	71	Do do.
Do 3	do	do	do	68.82	Do do.

List of swamp lands, Fremont county—Continued.

Parts of section.	Sec.	Town.	R'ng.	Acres.	Remarks.
Lot No. 4	30	70	43	53.08	Overflows timber.
Lot No. 1	31	do	do	36.20	Do do.
Do 2	do	do	do	29.28	Do do.
Do 3	do	do	do	64.40	Do do.
Do 4	do	do	do	55.15	Do do.
E half of NW qr	do	do	do	80	Do do.
E half	do	do	do	320	Do do.
All of	32	do	do	640	Marsh.
Do	33	do	do	640	Do.
Do	34	do	do	640	Do.
N half of NW qr	35	do	do	80	Do.
SW qr of SW qr	36	do	do	40	Do.
147 S half of NW qr	8	63	40	80	Marsh.
SW qr	8	do	do	160	Do.
SE qr	7	do	do	160	Do.
S half of NE qr	do	do	do	80	Do.
E half of SW qr	do	do	do	80	Do.
SW qr of SW qr	do	do	do	38.03	Do.
North half	18	do	do	315.77	Do.
N half of NW qr	17	do	do	80	Do.

148 UNITED STATES LAND OFFICE,
Council Bluffs, Iowa.

I, Frank Street, register of the local (United States) land office at Council Bluffs, Iowa, do hereby certify that the foregoing, on pages marked 1 to 6, inclusive, are true extracts from the list of swamp and overflowed lands in this district reported to this office by the surveyor general for the State of Iowa, and which was received and filed in this office on the 23d day of January, 1857.

And that the said foregoing is a full, true, and correct copy of all that part of said list reported as aforesaid which contains and describes lands situated in and selected for the county of Fremont in said State.

And I further certify that the following is a full, true, and correct copy of the certificate of the surveyor general which is endorsed upon the said lists reported by him, and filed in this office as aforesaid, to wit:

149 "SURVEYOR GENERAL'S OFFICE,
"*Dubuque, Jan'y* 8, 1857.

"I, Warner Lewis, surveyor general of the State of Iowa, do hereby certify that the foregoing list, marked No. , is a correct transcript of the original lists of selections made by the county surveyor or State locating agents; that the same has been carefully compared with the field notes, plats, and other evidences on file in this office; and by the affidavits of the said county surveyors or State locating agents it appears that the greater part of each smallest legal subdivision of land embraced in said list is swampy or subject to such overflow as to render it unfit for cultivation, and is therefore of the character contemplated by the act of 28th Sept., 1850.

"WARNER LEWIS, *Surveyor General.*"

And I further certify that the several tracts of land described in said list were properly noted on the tract books in this office, 150 and withdrawn from market in pursuance of the order of the Commissioner of the General Land Office, as contained in his letter dated September 30th, 1854, of which said letter I certify that the following is a full, true, and correct copy:

"GENERAL LAND OFFICE,
"*September* 30*th*, 1854.

"REGISTER AND RECEIVER, *Kanesville, Iowa:*

"GENTLEMAN: You will please, on receipt from the surveyor general of the list of swamp and overflowed lands selected for the State of Iowa in your district, note each tract therein embraced in its proper place, on your tract books, in pencil, and decline to permit any entries or locations upon any part of the same.

"Very respectfully, your ob't serv't,
"JOHN WILSON, *Commissioner.*"

All of which appears of record in this office. In testimony whereof I have hereunto set my hand officially this 24th day of April, 1865.
FRANK STREET, *Register.*

[Int. rev., F. S., Apr. 24, 1865.]

Endorsed: 2nd list of selections swamp lands, certified by register U. S. L. O., at Council Bluffs—"E." Filed Sept. 2nd, 1865. J. L. Mitchell, Clerk.

151 A list of lands in the Council Bluffs district, Iowa, claimed by said State as swamp under the act of Congress approved September 28th, 1850, and also as lands granted to her for railroad purposes under the act approved May 15th, 1856, her claim whereto as swamp has been rejected in accordance with the Secretary's decision of 8th of February, 1860.

152 *A list of swamp lands rejected and certified as R. R. lands, as certified from the Gen'l L. O., (all in Council Bluffs district.)*

Parts of section.	Sec.	Town.	R'ge.	Area.	Counties.	
		N.	W.			
SW qr of NE qr	3	71	34	40	Adams.	
NE qr of SW q r and SE qr of SW qr	3	do	do	80		
SE qr of SE qr	5	do	do	40		
NE qr of SE and W half of SW qr	7	do	do	134.95		
NW qr of NE qr and SE qr of SW qr	31	72	34	80		
S half of NE qr	35	do	do	80		
N half of NE qr and NW qr of NW qr	13	73	do	120		
SE qr of SE qr	15	do	do	40		
NE qr and N half of NW qr	27	do	do	240		
SW qr of NW qr	23	do	do	40		
S half of SW qr	29	do	do	80		
NE qr of NE qr and W half of SE qr	31	do	do	120		1,094.95
W half of SW qr and SE qr of SE qr	21	76	34	120	Cass.	
SE qr of SW qr	31	77	34	40		160
NW qr of NW qr	19	78	34	42.28	Audubon.	
N half of NW qr	17	79	do	80		
SE qr of NW qr	31	do	do	40		
SEhalf of section	19	81	do	320		
SE qr of SW qr and E half of section	31	do	do	360		842.28
W half of E half	3	68	35	62.71	Taylor.	
SW qr of NE qr and SW qr of SW qr	25	69	do	80		
E half of NE qr and SW qr of NE qr	35	do	do	120		262.71
W half of SW qr	1	71	35	80	Adams.	
NE qr of NW qr and SW qr of NW qr	11	do	do	80		
SE qr of SE qr	11	do	do	40		
S half of NE qr and N half of SE qr	11	do	do	160		
W half of NW qr	15	do	do	80		
153 NE qr, NE qr of SE qr, and SE qr of SW qr	17	71	35	240	Adams.	
SE qr of SE qr	19	do	do	40		
SE qr and SE qr of SW qr	31	do	do	200		
SE qr	11	72	do	160		
NW qr of NE qr and S half of NE qr	15	do	do	120		
NW qr of SE qr	15	do	do	40		
SW qr of NW qr	15	do	do	40		
SE qr of NW qr	15	do	do	40		
N half of section	29	do	do	320		920
NE qr of NW qr and SW qr of NW qr	29	77	do	80	Cass.	80
SE qr of SE qr	15	79	do	40	Audubon.	
SE qr of NE qr and SE qr of SE qr	1	80	do	80		
W half of SE qr	11	do	do	80		

List of swamp lands rejected, &c.—Continued.

Parts of section.	Sec.	Town.	R'ge.	Area.	Counties.	
		N.	W.			
S half of NE qr and E half of SE qr	23	80	35	160		
E half of NW qr and SW qr of NW qr	25	do	do	120		
E half of SW qr and NW qr of SW qr	35	do	do	120		600
E half of NW qr and W half of SE qr	7	68	36	183.10	Page.	
E half of NW qr, NE qr of SW qr, and S half of NE qr	9	do	do	200.00		
W half of SE qr and SE qr of SE qr	9	do	do	120		
SW qr of NE qr and SE qr of NW qr and SW qr	1	69	do	240		
W half of SE qr and SE qr of SE qr	1	do	do	120		
E half of section	5	do	do	301.50		
W half of section	9	do	do	320		
SE qr of NE, qr and W half of NE qr, and W half of SE qr	23	do	do	200		
SE qr, and SE qr of NE qr	27	do	do	200		
E half of NE qr and E half of SE qr	5	70	36	160.09		
N half of SW qr	9	do	do	80		
E half of NE qr	17	do	do	80		
E half of NW qr and E half of SW qr	21	do	do	160		
154 W half of SE qr and SE qr of SE qr	21	70	36	120	Page.	
SE qr, and W half of NE qr, and NE qr of NE qr	29	do	do	280		
E half of NW qr and S half of SW qr	33	do	do	160		2,924.69
E half of SE qr	9	71	36	80	Montgomery.	
E half of SE qr	21	do	do	80		
W half of NW qr and NE qr of NW qr	23	do	do	120		
NE qr of SE qr	27	do	do	40		
SW qr of SE qr	21	72	36	40		360
NW qr of SW qr	5	76	do	40	Cass.	
NW qr of SE qr	7	77	do	40		
SE qr of SW qr	9	do	do	40		
SW qr of SW qr	13	do	do	40		
W half of SW qr	19	do	do	62.60		
SE qr of NW qr	29	do	do	40		262.60
E half of NW qr and E half of SW qr	9	71	37	160	Montgomery.	
W half of NE qr and NE qr of SW qr	29	do	do	120		
W half of NE qr and NE qr of SW qr	33	do	do	120		400
SE qr of SE qr	7	74	do	40	Cass.	
N half of NW qr and SW qr of SW qr	17	do	do	120		
NW qr of SE qr	3	77	do	40		
E half of NW qr and NW qr of SE qr	5	do	do	119.42		

List of swamp lands rejected, &c.—Continued.

Parts of section.	Sec.	Town.	R'ge.	Area.	Counties.	
		N.	W.			
NE qr of SE qr	19	77	37	40		
W half of NW qr	27	do	do	80		539. 42
N half of NE qr and SW qr of NE qr	13	80	37	120	Shelby.	
N half of SW qr and NW qr of SE qr	13	do	do	120		
SW qr of NW qr, S half of SW qr, and NE qr of SW qr	23	do	do	160		
NW qr of NW qr	27	do	do	40		
SE qr of NW qr and SW qr of SE qr	29	do	do	80		
SW qr, and SW qr of SE qr	31	do	do	208. 76		728. 76
155 W half of NE qr and SW qr	7	7 1	3^8	237. 89	Montgomery.	
NW qr of NE qr	17	2	3 8	40		
W half of SW qr and NE qr SW qr	29	do	do	120		
SW qr of NE qr and E half of SW qr	31	do	do	120		517. 89
NW qr of NE qr	13	73	do	40		
SW qr " SW qr	31	do	do	36. 65		76.65
NW qr " NE qr	1	79	do	35. 19	Shelby.	
SW qr " NE qr	7	do	do	40		
E half NE qr, and W half SW, and NE SW	19	do	do	216. 21		
SE qr NE qr and W half SE qr	3	80	do	120		
E half SW qr and SW SW qr	3	do	do	120		
E half NE qr and E half SE qr	9	do	do	160		
SW, W, and E half SE qr, and E half SW qr	15	do	do	200		
W half of SW qr	17	do	do	80		
NE NE, and W half SE, and NE SE qr	19	do	do	160		
E half NE qr and E half SE qr	31	do	do	160		
E half NE qr, and SW NE qr, and N half SE	33	do	do	200		
N half of SE qr	35	81	38	80		1,571. 40
Whole of section	5	69	39	607. 94	Page.	
Do do do	7	do	do	630. 64		
E half NW, and SW NW qr, and SW SW qr	1	70	39	159. 10		
E half of SW qr	1	do	do	80		
NW qr	13	do	do	160		1,637. 68
SW NE qr and W half SE qr	1	71	39	120	Montgomery.	
S half of NW qr	17	do	do	80		
E half of NE qr	19	do	do	80		
SW qr " SE qr	11	72	39	40		
NE qr " NW qr	23	do	do	40		
NW qr of SE qr	27	do	do	40		400
156 E half sec. SW qr and W half NW qr	5	76	39	545. 16	Pottawattamie.	
E half sec. and SW qr	7	do	do	458. 84		
NW qr and W half of SW qr	17	do	do	240		
NW qr of NE qr and W half sec	19	do	do	34. 44		

List of swamp lands rejected, &c.—Continued.

Parts of section.	Sec.	Town.	R'ge.	Area.	Counties.
		N.	W.		
W half NE qr and W half SE qr	3	77	39	162.95	
SE qr of SE qr	3	do	do	40	
E half of sec. SW qr and E half NW qr	5	do	do	563.03	
E half of SE qr	9	do	do	80	
N half of NW qr	15	do	do	80	
E half sec. SW qr and E half NW qr	17	do	do	560	
NW qr	21	do	do	160	
Whole section	29	do	do	640	
W half of SW qr	33	do	do	80	3,981.42
NW qr of SW qr	3	78	39	40	Shelby.
Lot No. 1	5	do	do	80.88	
W half of NW qr	7	do	do	50.50	
NW qr of SE qr	9	do	do	40	
SW qr of SW qr	13	do	do	40	
SW qr of SE qr	23	do	do	40	
SE qr of SE qr	29	do	do	40	301.38
SE qr NE qr and S half SW qr	5	69	40	120	Fremont.
SW SE qr and N half SE qr	5	do	do	do	
N half of NW qr and SW NW qr and N half of NE qr	7	do	do	207.53	
SE qr and E half NE qr	1	70	40	239.94	
W half of sec. and SW qr of NE qr	13	do	do	360	
NE qr and W half SE qr and E half SW qr	23	do	do	320	
SE qr and SE qr NE qr and SE qr SW qr	27	do	do	240	
SE qr and SE qr SW qr and S half NE qr	33	do	do	280	1,887.47
157 NW qr NW and NE qr NW qr and SE qr of NW qr and SW qr of SW qr W half of NE qr and NE qr of NE qr	5	72	40	226.96	Mills.
W half sec. SW qr and E half of SE qr	7	do	do	557.88	
E half NE qr and W half of NW qr	17	do	do	160	
N half of section	19	do	do	321.93	
E half of NW qr and SW qr	1	73	40	235.33	
W half of NW qr and W half of SW qr	3	do	do	155.85	1,657
Whole of section	9	do	do	640	
S half SE qr and NE qr SE qr	11	do	do	120	
W half sec. SE qr and S half of NE qr	15	do	do	560	
E half Sw qr and W half SE qr and SE qr of SE qr	17	do	do	200	
Whole of section	21	do	do	640	
E half sec. NW qr and E half of SW qr	29	do	do	569	
NW qr of SW qr	29	do	do	40	
W half sec. SE qr and W half NE qr and NE qr of NE qr	31	do	do	580.44	3,340.40

List of swamp lands rejected, &c.—Continued.

Parts of section.	Sec.	Town.	R'ge.	Area.	Counties.	
		N.	W.			
W half NE qr and SE qr NE qr and SE qr	15	74	40	280	Pottawattimie.	
E half NW qr and SW NW qr.	21	do	do	120		
SW qr of NE qr and SE qr	27	do	do	200		
E half of SE qr	33	do	do	80		
NW qr and N half of SW qr	1	75	40	236.07		
W half sec. and N half of NE qr	11	do	do	400		
SW NE qr and NW SE qr	11	do	do	80		
NE qr and E half SE qr and NW SE.	15	do	do	280		
W half of section	23	do	do	320		
E half of NE qr	27	do	do	80		
W half sec. and SE qr	25	76	40	480		
E half NE qr and SW qr NE qr	25	do	do	120		2,676.07
158 SE qr of SE qr	11	80	40	40	Shelby.	40
Whole of section fr	5	69	41	626.80	Fremont.	
SE qr of NE qr and NE qr of SE qr	7	do	do	80		
SW qr NW qr and S half NE qr NE qr NE qr and S half of sec	9	do	do	480		
S half of sec. and S half NE qr and S half of NW qr	11	do	do	480		
NW qr and W half of SW qr.	3	70	41	234.83		
E half sec. SW qr and N half of NW qr	5	do	do	531.48		
E half NE and E half of SE qr.	7	do	do	160		
Whole of sec	9	do	do	640		
NW qr of NW qr	15	do	do	40		
E half sec. NW W half SW and NE qr of SW qr	17	do	do	600		
E half of SE qr and SW SE qr.	19	do	do	120		
E half of section	21	do	do	320		
W half of NW qr	27	do	do	80		
W half sec. W half NE and W half SE qr	29	do	do	480		
S half SE and W half SW qr and SE SW	33	do	do	200		
E half NE and E half SE and SW SE	31	do	do	200		527.31
Whole of section	9	71	41	640	Mills.	
NW qr and W half SW qr and NW qr of NE qr	11	do	do	280		
Whole section	15	do	do	640		
NE qr of NE qr	17	do	do	40		
E half sec. and SW qr and NE NW	21	do	do	520		
W half sec. and W half NE and W half SE	27	do	do	480		
SE qr and E half NE and E half NW qr	29	do	do	320		
E half SW qr and NW qr and SW qr	29	do	do	120		
SE qr of SE qr	31	do	do	40		
E half sec. SW qr and E half NW qr	33	do	do	500		

List of swamp lands rejected, &c.—Continued.

Parts of section.	Sec.	Town.	R'ge.	Area.	Counties.
		N.	W		
NW qr of NW qr	33	71	41	40	
159 SE qr and E half of S W qr	1	72	41	200	Mills.
S half of sec, E half, NE qr and NW qr of NE qr	13	do	do	440	
S half of NW qr	19	do	do	80.87	
E half of sec, SW qr and E ½ of NW qr	23	do	do	560	
W half of sec, and NE qr	25	do	do	480	
NE qr and E half of SE qr	27	do	do	240	
SW qr	29	do	do	160	
E half of sec, SW qr and N W qr of NW qr	35	do	do	520	
SW qr of SW qr	19	73	41	35.17	6,436.04
SW qr of SE qr	3	74	41	40	Pottawattamie.
NE qr and NE qr of SE qr	3	do	do	174.94	
W half of NW qr	15	do	do	80	
NE qr of SE qr	21	do	do	40	
E half of SE qr and SW qr of SE qr	29	do	do	120	
SW qr of SE qr	23	75	41	40	
SW qr of NE qr	35	do	do	40	
W half of NW qr and NW qr of SW qr	5	77	41	117.11	
E half of NE qr and NW qr of NE qr and E half of SE qr	7	do	do	200	
W half of SW qr and SE qr of SW qr	19	do	do	99.65	
W half of NW qr and SE qr of NE qr	25	do	do	120	1,071.70
NW qr of SW qr	5	80	41	42.70	Harrison. 42.70
NE qr N half of SE qr and S W qr	1	73	42	390.07	Mills.
NE qr and E half of SW qr	5	do	do	233.99	
E half of NE qr and E half of SE qr	11	do	do	160	
NW qr of NW qr	13	do	do	40	
E half of NW qr and W half of NE qr	19	do	do	160	
W half of SE qr and SE qr of SW qr	19	do	do	120	
N half of NE qr	25	do	do	80	
NE of NW qr and SW of NE qr and NW qr of SE qr	31	do	do	120	1,304.06
160 NW of NE qr and E ½ of NE ¼ and S ½ of SE qr	9	74	42	200	Pottawattamie.
W half of NE qr and E half of NW qr	21	do	do	160	
E half of SW qr and NW qr of SE qr	21	do	do	120	
SE qr of SE qr	29	do	do	40	
W half of NW qr	33	do	do	80	
W half of SW qr	27	75	42	80	
SE qr of NE qr and S half, S W qr and SE qr	3	76	42	280	
NE qr of SE qr	9	do	do	40	
SW qr of SW qr	25	do	do	40	
W half of NW qr	9	77	42	80	

List of swamp lands rejected, &c.—Continued.

Parts of section.	Sec.	Town.	R'ge.	Area.	Counties.	
		N.	W.			
NW qr of NW qr	17	77	42	40		
NW of NE qr and W half of SE qr and NE qr of SE qr	19	do	do	160		
NE qr and W half of SW qr and W half, SE qr and NE qr of SE qr	35	do	do	360		1680
E half, NW qr and NW of SW qr	27	78	42	120	Harrison.	
SE, NE qr and E half, SE qr and SW of SE qr	33	do	do	160		280
W half, NE qr and E half of NW qr	3	69	43	145.42	Fremont.	
E half sec., E half, SW and SW qr of NW qr	5	do	do	429.30		
W half of section	3	70	43	310.45		
NE, NE qr and lot No. 1	5	do	do	82.20		
Lot 3 and 4 and SW, SE and E half, SE qr	5	do	do	220.25		
S half of section	9	do	do	320		
E half of NE qr and SW, NE qr	9	do	do	120		
SE, NW and W half, NW qr	9	do	do	120		
W half of section	11	do	do	320		
S half sec, S half, NE qr and S half of NW qr	15	do	do	480		
NW qr	17	do	do	160		
SW qr of NE qr	17	do	do	40		
SE qr	17	do	do	160		
E half of SW and NW, SW qr	17	do	do	120		
161 Lots Nos. 1, 2, 3 and 4 and E half, SW qr	19	70	43	246.76	Fremont.	
NW qr and E half of NE qr and SE qr	21	do	do	400		
N half of section	27	do	do	320		
S half of SE qr and S half of SW qr	27	do	do	160		
E half of sec, W half, NW qr and W half of SW qr	29	do	do	480		
S half of sec, W half, NW qr and W half of SW qr	31	do	do	399.53		
W half of sec, SE qr, W half of NE qr	33	do	do	560		5,593.91
NW qr and W half of NE qr	1	71	43	219.46	Mills.	
N half sec, SE, E half SW qr and NW qr of SW qr	3	do	do	551.24		
NW qr, N half, SW S half, NE qr and SW	5	do	do	451.47		
W half sec, W half, NE qr and E half, SE	9	do	do	480		
N half, NE qr, and N half of NW qr	11	do	do	160		
S half of sec, and W half of NW qr	17	do	do	400		
NE qr of NE qr	19	do	do	40		
NW qr, W half, SW and NW of NE qr	21	do	do	280		
E half of section	29	do	do	320		

List of swamp lands rejected, &c.—Continued.

Parts of section.	Sec.	Town.	R'ge.	Area.	Counties.
		N.	W		
NW qr of NE qr and S half of NE qr and SE qr of NW qr	33	71	43	160	
SE qr and E half of SW qr	33	do	do	240	
W half of SW qr and SE qr of SW qr	35	do	do	120	
SW qr of SE qr	35	do	do	40	
W half sec, W half, NE and N E of NE	5	72	43	403. 88	
SW qr of NW qr	7	do	do	41. 51	
SW qr	17	do	do	160	
W half of section	19	do	do	320. 15	
Whole of section	21	do	do	640	
SW qr of SW qr	23	do	do	40	
Whole of section	27	do	do	640	
E ½ sec, SW qr and W ½ of SW	29	do	do	560	
162 E half of section	31	72	43	320	Mills.
W half sec, W half NE qr and W half of SE qr	33	do	do	480	
E half sec and S half of NW qr	35	do	do	400	
NE, N half NW, NW, SE and SE, SW	5	73	43	325. 22	
W half sec, SE, W half NE, SE, NE	7	do	do	595. 82	
E half NW and E half of SW qr	17	do	do	160	
NW, NW and S half NE and E half SE	19	do	do	201. 30	
W half NE qr and W half S E qr	31	do	do	160	7,207. 88
S half of sec and W half of NW qr	17	74	43	400	Pottawattamie.
Whole of sec	21	do	do	640	
W half NW and W half of SW qr	27	do	do	160	
NE qr, E half SE and lot 1 and 2	29	do	do	365. 80	
N half of NW, SW, NW qr and lots No. 3 and 4	29	do	do	209. 20	
NW qr, N half NE qr and W half of SW qr	31	do	do	304. 62	
NW NE, NW, SW and NW qr	33	do	do	240	
N half NE and E half of NW	5	76	do	147. 61	
SE qr of SW and S half of SE	23	77	do	120	
NE of NE and NW NE	25	do	do	80	
NW qr of NW qr	25	do	do	40	
NE of NE and SW, NE qr	27	do	do	80	
SE qr, NW qr and NW, SW	27	do	do	80	
W half NE and SE, NW	33	do	do	120	
W half SW and NE qr, SW	33	do	do	120	
Lots 1, 2, 3, 4, 5, 9, 10, 14, 18 and W half SW qr	5	78	43	454. 16	Harrison.
W half sec, NE qr, W half S E qr and NE qr of SE qr	7	do	do	544. 60	Do.
Whole of sec	1	72	44	542. 95	Mills.
Lot No. 1	11	do	do	15. 68	Do.
W half of NE qr and NW qr of SE qr	13	do	do	120	

List of swamp lands rejected, &c.—Continued.

Parts of section.	Sec.	Town.	R'ge.	Area.	Counties
		N.	W.		
163 NE qr of SW qr and NE qr of NW qr....	13	72	44	80	Mills.
E half of NW qr, and W half of NE qr..............	25	do	do	160	
W half of SE qr, and NE qr of SW qr..............	25	do	do	120	
NE qr of NE qr............	1	73	44	40.37	
S half of SE qr, and SE qr of SW qr......	1	do	do	120	
E half NE qr, and NW qr NE qr, and NE qr SE qr..	13	do	do	160	
Lots No 2 and 3...........	23	do	do	64.50	
Whole of f'l sec..........	27	do	do	12.60	
NE qr of NW qr, and lots 1, 2, and 3................	35	do	do	191.27	
Whole of f'l sec............	9	74	44	174.77	Pottawattamie.
S half of NE qr............	21	do	do	80	
N half of NE qr..........	25	do	do	80	
SW qr......................	25	do	do	160	
Whole of f'l section.........	27	do	do	27.58	
W half of NE qr, and NE qr of NE qr...............	35	do	do	120	
W half of NE qr, and N half of NW qr...............	3	75	49	151	
W half NW qr, NE qr SW qr and lots 3 and 5..........	11	do	do	209.36	
Lots 1, 2, and 3.............	23	do	do	119.99	
SE qr of SE qr..........	1	76	do	40	
NE qr of NW qr............	13	do	do	40	
S half of section............	15	do	do	320	
W half of NW qr..........	15	do	do	80	
NE qr of NE qr............	15	do	do	40	
NE qr......................	23	do	do	160	
W half of NW qr..........	23	do	do	80	
NE qr of NW qr......	23	do	do	40	
W half of SE qr, and SW qr.......................	23	do	do	240	
164 W half of SE qr, S half of SW qr, SE qr of NE qr, lots 1, 2, 3, and 4..	27	76	44	407.49	Pottawattamie.
Lots No 1 and 2, and SE qr..	29	do	do	273.90	
SW qr........................	29	do	do	160	
N half of sec.................	33	do	do	320	
E half of SE qr..............	33	do	do	80	
SW qr of SE qr..............	33	do	do	40	
SE qr........................	5	77	44	160	
SW qr........................	5	do	do	160	
W half of section..........	15	do	do	320	
SW qr of SE qr............	15	do	do	40	
W half of SW qr, and SW qr of NW qr..............	23	do	do	120	
N half of SE qr..........	27	do	do	80	
E half of SE qr, and SW qr of SW qr..............	29	do	do	120	
NW qr of SW qr, and SE qr of SW qr................	29	do	do	80	
Lot No 1, E half NW qr, and NW qr of NW qr........	33	do	do	187.70	

List of swamp lands rejected, &c.—Continued.

Parts of section.	Sec.	Town.	R'ge.	Area.	Counties.
		N.	W.		
W half of section	35	77	44	320.00	
SW qr W half SE qr, and NE qr of SE qr	13	78	44	280	Harrison.
S half of SW, and S half S E qr	23	do	do	160	
W half sec, NE qr W half of SE qr, and NE qr of NE qr.	27	do	do	600	
W half sec and NE qr.	33	do	do	480	70,710.08 acres. (70,708.73)

165 GENERAL LAND OFFICE, *October 25th*, 1861.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby reject the claim of the State of Iowa to the foregoing lands as swamp, under the act of Congress approved September 28th, 1850, in accordance with the Secretary's decision of the 8th of February, 1860, the same not appearing to be swamp by the field-notes, and other evidences on the files of this office.

(Signed) J. M. EDMUNDS,
Commissioner.

166 IOWA STATE LAND OFFICE.

I, J. A. Harvey, register of the State land office of the State of Iowa, hereby certify that the foregoing, on pages from 2 to 4 inclusive, is a full, true, and correct copy of a list returned to this office from the land department of the United States, designating the lands in Council Bluffs land district, claimed by the State of Iowa as swamp and overflowed lands under the act of Congress of September, 1851, the claim whereto, under said act, has been rejected by the Commissioner of the General Land Office. And I certify that the statement on page one of the foregoing, is a true and correct copy of the statement on page one of said list, returned as aforesaid, so far as relates to said district.

And I further certify that the statement on the preceeding page, 15, is a true, full, and correct copy of the statement attached to said list, purporting to be the decision or order of the Hon. J. M. Edmunds, Commissioner of the General Land Office, rejecting
167 the said claim, as the same was together with said list returned to, and remains in, this office.

Given under my hand and official seal, at Des Moines, this sixth day of October, 1864.

[L. S.] J. A. HARVEY, *Register.*

[Int. rev., Oct. 6, 1864, J. A. H.]

168	Adams co	2,734.95	acres.
	Audubon “	1,442.28	“
	Cass “	941.02	“
	Fremont “	12,754.49	“
	Harrison “	2,841.46	“
	Mills “	23,274.96	“
	Montgomery “	1,754.54	“
	Page “	4,562.37	“
	Pottawattamie	17,498.41	“
	Shelby	2,641.54	“
	Taylor	262.71	“
	Total	70,708.73	acres.

Endorsed: List of rejected swamp lands. State land office. “M.” Filed Sept. 2nd, 1865. J. L. Mitchell, clerk.

169 DEFENDANTS' EXHIBITS.

Exhibit No. 1.—*Authenticated copy of the acceptance of the land grant.*

170 OFFICE BUR. & MO. RIVER RAILROAD CO.,
BURLINGTON, IOWA, *Sept.* 3*rd*, 1856.

At a regular meeting of the board of directors of the said company, held this day, the following resolutions were unanimously adopted :

Resolved, That the act of the general assembly of the State of Iowa, approved July 14th, 1856, entitled An act to accept the grant and carry into execution the trust confered upon the State of Iowa by an act of Congress entitled An act making a grant of lands to the State, in alternate sections, to aid in the construction of railroads in said State, approved May 15th, 1856, be, and the same is hereby, accepted by this company, and all the provisions of the same are hereby assented to.

W. F. COOLBAUGH, *President.*

Attest, with the seal of the company hereto affixed, this 3d day of Sept., 1856.

[SEAL.] OLIVER COCK, *Secretary.*

STATE OF IOWA, *ss* :

OFFICE OF SECRETARY OF STATE.

I, James Wright, secretary of state of the State of Iowa, hereby certify that the foregoing is a correct copy of the acceptance by the Burlington and Missouri River Railroad Company of the land grant made by the State of Iowa, in pursuance of the laws of Congress, as the same remains of record now in my office.

Witness my hand and the great seal of the State of Iowa, at Des Moines, this 2nd day of March, A. D. 1865.

JAMES WRIGHT,
Sec'y of State.

[Rev. stamp.]

171 *A list of lands granted to the Burlington and Missouri River rail, by act of* 15*th May*, 1856, *lying in Fremont county, Iowa.*

[Exhibit No. 2.]

Parts of section.	Sec.	Town.	R'ng.	Area.
N half of SW qr	5	69	40	80.00
S half of SW qr, and SE qr of NE qr	5	do	do	120.00
W half of SE qr and NE qr of SE qr	5	do	do	120.00
N half of NE qr, N half of NW qr, SW qr of NW qr	7	do	do	207.53
SE qr and E half of NE qr	1	70	40	239.94
W half of sec and SW qr of NE qr	13	do	do	360.00
NE qr, W half of SE qr and E half of SW qr	23	do	do	320.00
SE qr, SE qr of NE qr and SE qr of SW qr	27	do	do	240.00
SE qr, S half of NE qr and SE qr of SW qr	33	do	do	280.00
W half of SW qr and W half of NW qr	33	do	do	160.00
Whole of	5	69	41	626.80
SE qr of NE qr and NE qr of SE qr	7	do	do	80.00
S half of sec and E half of NE qr	9	do	do	400.00
SW qr of NE qr and SW qr of NW qr	9	do	do	80.00
S half of sec, S half of NE qr and S half of NW qr	11	do	do	480.00
NW qr and W half of SW qr	3	70	41	234.83
S half of sec, N half of NW qr, NE qr	5	do	do	541.48
S half of NW qr	5	do	do	80.00
E half of NE qr and E half of SE qr	7	do	do	160.00
Whole of	9	do	do	640.00
NW qr of NW qr	15	do	do	40.00
E half of sec, NW qr	17	do	do	480.00
W half of SW qr and NE qr of SW qr	17	do	do	120.00
				6,090.58
172 E half of SE qr and SW qr of SE qr	19	70	41	120.00
E half of sec	21	do	do	320.00
W half of NW	27	do	do	80.00
W half of sec, W half of NE qr, and W half of SE qr	29	do	do	480.00
E half of NE qr, E half SE and SW SE	31	do	do	200.00
S half of SE, S half of SW and NW of SW	33	do	do	200.00
W half of NE qr and E half of NW	3	69	43	145.42
E half sec, E half SW and SE of NW	5	do	do	429.30
NE qr of SW qr and SW qr of SW qr	1	70	43	80.00

List of lands granted, &c.—Continued.

Parts of section.	Sec.	Town.	R'ng.	Area.	
W half of sect	3	70	43	310.45	
Lots 1, 3, and 4, and NE qr of NE qr	5	do	do	182.45	
E half of SE qr and SW qr of SE qr	5	do	do	120.00	
S half of sec, W half of NW qr and SE of NW	9	do	do	440.00	
E half of NE qr and SW qr of NE qr	9	do	do	120.00	
W half of sec	11	do	do	320.00	
S half of sec, S half of NE qr and S half of NW qr	15	do	do	480.00	
NW qr, SE qr, SW qr of NE qr	17	do	do	360.00	
E half of SW qr and NW qr of SW qr	17	do	do	120.00	
Lot 3	19	do	do	44.80	
NW qr SE qr, E half of NE qr	21	do	do	400.00	
N half of sec, S half of SE qr and S half of SW qr	27	do	do	480.00	
E half of sec, W half of NW qr and W half of SW qr	29	do	do	480.00	
S half of sec, E half of NE qr and NE qr NW qr	31	do	do	399.53	
W half of sec, SE qr and W half of NE qr	33	do	do	560.00	
				16,871.95	
				6,090.58	
				12,962.53	
173 Whole of	1	69	40	612.94	
E half and NW qr and E half of SW qr and NW qr of SW qr	3	69	40	569.26	
SW qr of NE qr	5	69	40	49.00	
N half of sec	11	69	40	320.00	
W half of NW qr	1	70	40	80.00	
E half of NW qr and W half of NE qr	1	70	40	166.00	
SW qr	1	70	40	160.00	
Whole of	3	70	40	641.22	
Do do	5	70	40	640.58	
S half and E half of NE qr and W half of NW qr	7	70	40	495.72	
Whole of	9	70	40	640.00	
NW qr of NW qr	11	70	40	40.00	
E half of NE qr and NW qr of NE qr and SE qr	13	70	40	280.00	
Whole	15	70	40	640.00	
Whole	17	70	40	640.00	
Whole	19	70	40	658.54	
N half and E half of SE qr and NW qr of SE qr	21	70	40	440.00	
W half of SW qr and NE qr of SW qr	21	70	40	120.00	
E half of SE qr	23	70	40	80.00	

List of lands granted, &c.—Continued.

Parts of section.	Sec.	Town.	R'ng.	Area.
W half of SW qr	23	70	40	80.00
SW qr of NE qr and NW qr of SE qr	25	70	40	80.00
SE qr of NW qr and NE qr of SW qr	25	70	40	80.00
E half of NE qr and E half of SE qr	25	70	40	160·00
				7,659.20
174 SW qr of S E qr and W half of NW qr	25	70	40	120.00
W half of SW qr and SE qr of SW qr	25	70	40	120.00
Whole of	31	70	40	660.96
Do do	35	70	40	640.00
NE qr and NW qr of NW qr	1	69	41	178.29
SW qr of SE qr and S half of SW qr	3	69	41	120.00
SE qr of NW qr	1	70	41	40.00
SW qr of SW qr	1	70	41	40.00
E half of NE qr of NE qr and NW qr of NE qr	23	70	41	120.00
NE qr of SE qr and SW qr of NE qr	25	70	41	80.00
E half NW qr	27	70	41	80.00
NE qr of SE qr	35	70	41	40.00
NW qr	7	69	42	165.37
SE qr of SW qr	1	70	42	40.00
NE qr of SE qr	5	70	42	40.00
W half of SW qr and SE qr of SW qr	31	70	42	121.89
E half of NW qr and E half of SW qr	1	69	43	541.18
NE qr of NE qr	1	70	43	41.99
NW qr of NE qr	1	70	43	41.96
SW qr of NE qr	1	70	43	40.00
SE qr of SW qr	1	70	43	40.00
W half of SE qr	1	70	43	80.00
SW qr of NE qr	11	70	43	40.00
				3,431.54
175 SE qr of	11	70	43	160.00
W half of SW qr	13	70	43	80.00
W half of NE qr and SE qr of NE qr	23	70	43	120.00
SE qr of NW qr and SE qr and E half of SW qr	23	70	43	280.00
SW qr	23	70	43	40.00
SW qr of SW qr	25	70	43	160.00
NE qr of NE qr	35	70	43	40.00
				880.00
				7,659.20
				3,431.54
				11,970.74
Add				10
				11,970.84

STATE LAND OFFICE IOWA,
Des Moines, *April* 12, 1862.

I, A. B. Miller, register of the State land office, do hereby certify the foregoing list to be a true and exact copy of the list of lands lying in Fremont county, approved to the State as railroad lands, and falling within the fifteen mile limits of the Burlington and Missouri River railroad line, as shown by the original and supplemental list now on file in this office, which lists are approved by the Secretary of of the Interior and certified to under the signature and seal of the Commissioner of the General Land Office, as lands granted by the act of Congress approved May 15th, 1856, and subject to the conditions and rights therein named.

In testimony whereof I have hereto set my hand the date above written.

A. B. MILLER, *Register*.

176 Exhibit No. 3.—Burlington and Missouri River Railroad. Supplemental list of lands. Act of 15th of May, 1856. Council Bluffs district, Iowa. 15 mile limits. Approved March 21, 1862. (Exhibit A.)

177 GENERAL LAND OFFICE, *March* 25, 1862.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the annexed, from page one to page five inclusive, is a true and literal exemplification of the original approved list on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

(Signed)
[SEAL.]
J. M. EDMUNDS,
Commissioner of the Gen'l Land Office.
SAM'L J. KIRKWOOD.

178 *Exhibit No. 3.—The Burlington and Missouri River Railroad.*

Supplemental list of lands in the district of lands subject to sale at Council Bluffs, outside of the six and within the fifteen mile limits of the reserve to satisfy the grant made to the State of Iowa by the act of Congress approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State," being the lands selected by the agent of the governor of the State of Iowa from the lands of the United States in alternate sections and parts of sections designated by odd numbers, nearest to the tiers of sections within six sections in width on each side of the railroad "from Burlington on the Mississippi river to a point on the Missouri river near the mouth of the Platte river," and in lieu of the lands in the alternate sections designated by odd numbers within said six sections in width which the United States had legally "sold or otherwise appropiated, or to which the rights of pre-emption have attached."

SAMUEL J. KIRKWOOD.

179 *North of base line and west of the 5th principal meridian, Iowa.—The Burlington and Missouri River railroad list Council Bluff's district,* 15 *mile limits.*

Parts of section.	Sec.	Town.	R'nge.	Area.	No.
NW qr	1	69	34	150.09	1
E half of SW qr and SW qr of SW qr	9	do	do	120.00	2
N half of SE qr	15	do	do	80.00	3
NW qr	17	do	do	160.00	4
SW qr	21	do	do	160.00	5
NW qr, W half of SE qr	23	do	do	240.00	6
E half of NW qr.	25	do	do	80.00	7
NE qr	27	do	do	160.00	8
NE qr of NW qr	29	do	do	40.00	9
NE qr of SE qr	1	73	34	40.00	10
SE qr of SE qr	15	do	do	40.00	11
SW qr of NW qr	23	do	do	40.00	12
NE qr N half of NW qr	27	do	do	240.00	13
S half of SW qr	29	do	do	80.00	14
W half of SE qr and NE qr of NE qr	31	do	do	120 00	15
W half of E half	3	68	35	62.71	16
NE qr	11	69	do	160.00	17
NW qr, N half of NE qr	13	do	do	240.00	18
SW qr of NE qr and SW qr of SW qr	25	do	do	80.00	19
NE qr of NE qr	27	do	do	40.00	20
S half of NE qr and NE qr of NE qr.	35	do	do	120.00	21
E half of SE qr	do	do	do	80.00	22
E half of NW qr and W half of SW qr	7	68	36	183.10	23
E half of NW qr, S half of NE qr and W half SE qr	9	do	do	240.00	24

Statement—Continued.

Parts of section.	Sec.	Town.	R'nge.	Area.	No.
NE qr of SE qr and NE qr SW qr	9	68	36	80.00	25
SW qr, SW qr of NE qr and SE qr of NW	1	69	36	240.00	26
W half of SE qr and SE qr of SE qr	do	do	do	120.00	27
E half of sec	5	do	do	301.60	28
W half of sec	9	do	do	320.00	29
W half of NE qr, SE qr of N E qr and W half of SE qr	23	do	do	200.00	30

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180 NE qr of SE qr	25	69	36	240.00	31
SE qr, SE qr of NE qr	27	do	do	200.00	32
SE qr, W half of NE qr and NE qr of NE	29	70	36	280.00	33
E half of NW qr and S half SW	33	do	do	160.00	34
NE qr	7	73	36	160.00	35
SW qr	9	69	37	160.00	36
SW qr	15	do	do	160.00	37
				5,377 40	
E half of sec and NW qr	17	69	37	480.00	38
NE qr, E half of NW qr and SW qr of NW qr	19	do	do	281.35	39
NW qr	21	do	do	160.00	40
NW qr	29	do	do	160.00	41
W half of SE qr and E half of of SW qr	25	70	37	160.00	42
W half of SE qr and NE qr of SW qr	29	73	37	120.00	43
SE qr of SE qr	7	74	37	40.00	44
SW qr of NW qr and NW qr of SW qr	17	do	do	120.00	45
NW qr of NE qr	13	73	38	40.00	46
SW qr of NW qr and NW qr of SW qr	11	74	38	80.00	47
Wholf of	5	69	39	607.94	48
Do do	7	do	do	630.64	49
E half of NW qr and SW qr of NW qr	1	70	39	119.10	50
E half of SW qr and SW qr of SW qr	1	do	do	120.00	51
NW qr	13	do	do	160.00	52
N half of SW qr	5	69	40	80.00	53
S half of SW qr and SE qr of NE qr	do	do	do	120.00	54
W half of SE qr and NE qr of SE qr	do	do	do	120.00	55
N half of NE qr, N half of N W qr, and SW qr of NW qr	7	do	do	207.53	56

Statement—Continued.

Parts of section.	Sec.	Town.	R'nge.	Area.	No.
SE qr, E half of NE qr	1	70	40	239.94	57
W half of sec and SW qr of NE qr	13	do	do	360.00	58
NE qr, W half of SE qr and E half of SW qr	23	do	do	320.00	59
SE qr, SE qr of NE qr, and SE qr of SW qr	27	do	do	240.00	60
SE qr, S half of NE qr and SE of SW qr	33	do	do	280.00	61
W half of SW qr and W half of NW qr	do	do	do	160.00	62

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181 SW qr, E half of N W qr	1	73	40	235.23	63
W half of NW qr and W half of SW qr	3	do	do	155.85	64
Whole of	9	do	do	640.00	65
S half of SE qr and NE qr of SE qr	11	do	do	120.00	66
S half of sec, NW qr, S half of NE qr	15	do	do	560.00	67
E half of SW qr, W half of S E qr, and SE qr of SE qr	17	do	do	200.00	68
N half of sec	21	do	do	320.00	69
SE qr, W half of NE qr and SE qr of NE qr	15	74	40	280.00	70
E half of NW qr and SW qr NW qr	21	do	do	120.00	71
SW qr of NE qr and SE qr	27	do	do	200.00	72
E half of SE qr	33	do	do	80.00	73
Whole of	5	69	41	626.80	74
				8,944 38	
SE qr of NE qr and NE qr of SE qr	7	69	41	80.00	75
S half of sec and E half of N E qr	9	do	do	400.00	76
SW qr of NE qr and SW qr of NW qr	do	do	do	80.00	77
S half of sec, S half of NE qr and S half of NW qr	11	do	do	480.00	78
NW qr, W half of SW qr	3	70	41	234.83	79
S half of sec, N half of NW qr, NE qr	5	do	do	541.48	80
S half of NW qr	do	do	do	80.00	81
E half of NE qr and E half of SE qr	7	do	do	160.00	82
Whole of	9	do	41	640.00	83
NW qr of NW qr	15	do	do	40.00	84
E half of sec, NW qr	17	do	do	480.00	85
W half of SW qr and NE qr. of SW qr	17	do	do	120.00	86

Statement—Continued.

Parts of section.	Sec.	Town.	n'ge.	Area.	No.	
E half of SE qr and SW qr of SE qr	19	70	41	120.00	87	
E half of sec	21	do	do	320.00	88	
W half of NW qr	27	do	do	80.00	89	
W half of sec, W half of NE qr and W half of SE qr	29	do	do	480.00	90	
E half of NE qr, E half of SE qr and SW qr of SE qr	31	do	do	200.00	91	

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182 S half of SE qr, S half of SW, and NW qr of SW qr	33	70	41	200.00	92	
W half of SE qr	27	71	41	80.00	93	
SE qr of SE qr.	31	do	do	40.00	94	
E half of sec and SW qr	33	do	do	480.00	95	
E half of NW qr and NW qr of NW qr	33	do	do	120.00	96	
SE qr of SE qr	13	73	41	40.00	97	
W half of NW qr	15	74	41	80.00	98	
NE qr of SE qr	21	do	do	40.00	99	
E half of SE qr and SW qr of SE qr	29	do	do	120.00	100	
NE qr, SW qr, N half of SE qr	1	73	42	390.07	101	
NE qr, E half of SW qr	5	do	do	234.00	102	
E half of NE qr and E half of SE qr	11	do	do	160.00	103	
NW qr of NW qr	13	do	do	40.00	104	
W half of NW qr	33	74	42	80.00	105	
W half of NE qr and E half of NW qr	3	69	43	145.42	106	
E half of sec, E half of SW qr and SE NW	5	do	do	429.30	107	
NE qr of SW qr and SW qr of SW qr	1	70	43	80.00	108	
W half of sec	3	do	do	310.45	109	
Lots 1, 3, 4, and NE qr of NE qr	5	do	do	182.45	110	
E half of SE qr and SW qr of SE qr	do	do	do	120.00	111	
				7,908.00		
S half of sec, W half of NW qr and SE qr of NW qr	9	70	43	440.00	112	
E half of NE qr and SW qr of NE qr	do	do	do	120.00	113	
W half of sec	11	do	do	320.00	114	
S half of sec, S half of NE qr and S half of NW qr	15	do	do	480.00	115	
NW qr, SE qr, SW qr of NE qr	17	do	do	360.00	116	

Statement—Continued:

Parts of section.	Sec.	Town.	R'nge.	Area.	No.
E half of SW qr and NW of SW	11	701	43	120.00	117
Lot 3	19	do	do	44.80	118
NW qr, SE qr, E half of N E qr	21	do	do	400.00	119
N half of sec, S half of SE qr and S half of SW qr	27	do	do	480.00	120

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183 E half of sec, W half NW qr and W half of SW qr	29	70	43	480.00	121
S half of sec, E half of NE qr and W half NW	31	do	do	399.53	122
W half of sec SE qr, W half of NE qr	33	do	do	560.00	123
NW qr, W half of SW qr, and NW NE	21	71	43	280.00	124
E half of sec	29	do	do	320.00	125
SE qr, S half of NE qr and N W of NE	33	do	do	280.00	126
E half of SW qr and SE qr of NW qr	do	do	do	120.00	127
W half of SW qr and SE qr of SW qr	35	do	do	120.00	128
SW qr of SE qr	do	do	do	40.00	129
E half of SE qr and NW qr of SE qr	1	73	43	120.00	130
E half of NW qr and E half of SW qr	17	do	do	160.00	131
E half of NE qr and NW N E qr	13	73	44	120.00	132
NE qr of SE qr	do	do	do	40.00	133
				5,804.33	

RECAPITULATION.

Page 2	5,377.40
Do 3	8,944.38
Do 4	7,908.00
Do 5	5,804.33
	28,034.11

Making a total of twenty-eight thousand and thrity-four acres and eleven hundredths of an acre.

SAMUEL J. KIRKWOOD.

184 GENERAL LAND OFFICE,
March 14, 1862.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to five inclusive, is a true and correct list of the tracts of land selected by the agent of the State of Iowa, outside of the six, and within the fifteen mile limits, under the act of Congress approved the 15th of May, 1856, entitled "An act making a grant of land to the State of Iowa, in alternate sections to aid in the construction of certain railroads in said State;" the said sections being from the lands of the United States in the alternate sections designated by odd numbers most contiguous to the tiers of sections within six sections in width on each side of the railroad "from Burlington, on the Mississippi river, to a point on the Missouri river near the mouth of the Platte river," known as the Burlington and Missouri River railroad," and being in lieu of the land in the alternate sections designated by odd 185 numbers within said six sections in width on each side of said road, which the United States had legally sold, or to which the right of pre-emption had legally attached, prior to the period at which the rights of the State inured under said grant; and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of the 15th of May, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed at the city of Washington, on the day and year first herein above written.

(Signed) J. M. EDMUNDS,
Commissioner.

DEPARTMENT OF THE INTERIOR,
March 21, 1862.

Approved, subject to the conditions and rights above mentioned.

(Signed) CALEB B. SMITH,
Secretary.
SAM'L J. KIRKWOOD.

186 UNITED STATES OF AMERICA, *State of Iowa, ss*:

Know ye that I, Sam'l J. Kirkwood, governor of the State of Iowa, and keeper of the great seal thereof, do hereby certify that the foregoing papers, that is to say, a paper purporting to be a certificate of J. M. Edmunds, Commissioner of the General Land Office, dated General Land Office, March 25, 1862, also a paper purporting to be a supplemental list of lands in the district of lands subject to sale at Council Bluffs, outside of the six, and within the fifteen mile limits of the reserve to satisfy the grant made to the State of Iowa by the act of Congress approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections to aid in the construction of certain railroads in said State," being the

lands selected by the agent of the governor of the State of Iowa, from the lands of the United States in alternate sections and parts of sections designated by odd numbers nearest to the tiers of sec-
187 tions within six sections in width, on each side of the railroad, from Burlington, on the Mississippi river, to a point on the Missouri river near the mouth of the Platte river, and in lieu of the lands in the alternate sections designated by odd numbers within said six sections in width, which the United States had legally sold or otherwise appropriated, or to which the rights of pre-emption have attached; said list occupying from pages, and numbered by pages 1, 2, 3, 4, and 5, and a paper purporting to be a copy of a certificate of J. M. Edmunds, Commissioner, dated General Land Office, March 14, 1862, to which is attached the words, "Approved subject to the conditions and rights above mentioned," purporting to be signed by Caleb B. Smith, Secretary, and dated Department of the Interior, March 21st, 1862, on each and all of which papers and pages I have affixed my signature, by way of attestation, on the right hand lower corner, are true copies of the originals transmitted to me, and
188 by me deposited for safe keeping in the office of the register of the State land office of the State of Iowa.

In testimony whereof, I have hereunto set my hand, and caused to be affixed the great seal of the State of Iowa. Done at Des Moines this 12th day of April, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-sixth, and of this State, the sixteenth.

(Signed) SAMUEL J. KIRKWOOD.

By the governor:

(Signed) ELIJOH SELLS,
Sec'y of State.

189 Endorsed: H. C. Kingsbury *vs.* B. & Mo. R. R. R. Co. Answer of defendants. Filed Sept. 7, 1863. N. A. Talcot, clerk. No. 75.

190 *Exhibit No.* 4.

GENERAL LAND OFFICE, *March 25th*, 1862.

I. J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the annexed from pages one to page five inclusive is a true and literal exemplification of the original approved list on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

J. M. EDMUNDS,
Commissioner Gen'l Land Office.
SAMUEL J. KIRKWOOD.

191 *The Burlington and Missouri River railroad.*

Supplemental list of lands in the district of lands subject to sale at Council Bluffs, outside of the six, and within the fifteen mile limits of the reserve, to satisfy the grant made to the State of Iowa by the act of Congress approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa in alternate sections, to aid in construction of certain railroads in said State," being the lands selected by the agent of the governor of the State of Iowa from the United States, in alternate sections and parts of sections designated by odd numbers, nearest to the tiers of sections within six sections in width on each side of the railroad "from Burlington, on the Mississippi river, to a point on the Missouri river, near the mouth of the Platte river," and in lieu of the lands in the alternate sections designated by odd numbers, within six sections in width, which the United States had legally "sold or otherwise appropriated, to which the rights of pre-emption have attached."

SAMUEL KIRKWOOD.

192 *North of base line and west of the 5th principal meridian, Iowa: The Burlington and Missouri River railroad list, Council Bluffs district, 15 mile limits.*

No.	Parts of section.	Sec.	Town.	R'ng.	Area.	Remarks.
193 1	NW qr	1	69	34	150.09	
2	E half of SW qr, and SW qr of SW qr	9	do	do	120.00	
3	N half of SE qr	15	do	do	80.00	
4	NW qr	17	do	do	160.00	
5	SW qr	21	do	do	160.00	
6	NW qr, W half of SE qr	23	do	do	240.00	
7	E half of NW qr	25	do	do	80.00	
8	NE qr	27	do	do	160.00	
9	NE qr of NW qr	29	do	do	40.00	
10	NE qr of SE qr	1	73	34	40.00	
11	SE qr of SE qr	15	do	do	40.00	
12	SW qr of NW qr	23	do	do	40.00	
13	NE qr, N half of NW qr	27	do	do	240.00	
14	S half of SW qr	29	do	do	80.00	
15	W half of SE qr, and NE qr of NE qr	31	do	do	120.00	
16	W half of E half	3	68	35	62.71	
17	NE qr	11	69	do	160.00	
18	NW qr, N half of NE qr.	13	do	do	240.00	
19	SW qr of NE qr, and SW qr of SW qr	25	do	do	80.00	
20	NE qr of NE qr	27	do	do	40.00	
21	S half of NE qr, and NE qr of NE qr	35	do	do	120.00	
22	E half of SE qr	do	do	do	80.00	
23	E half of NW qr, and W half of SW qr	7	68	36	183.10	
24	E half of NW qr, S half NE qr, and W half of SE qr	9	do	do	240.00	
25	NE qr of SE qr, and NE qr of SW qr	do	do	do	80.00	
26	SW qr, SW qr of NE qr, and SE qr of NW	1	69	36	240.00	
27	W half of SE qr, and SE qr of SE qr	do	do	do	120.00	
28	E half of sec	5	do	do	301.50	
29	W half of sec	9	do	do	320.00	
30	W half of NE qr, SE qr of NE qr, and W half SE qr	23	do	do	200.00	
31	NE qr of SE qr	25	do	do	40.00	
32	SE qr, SE qr of NE qr	27	do	do	200.00	
33	SE qr, W half of NE qr, NE qr of NE qr	29	70	36	280.00	
194	[Page one continued.]					
34	E half of NW qr, and S half of SW qr	33	70	36	160.00	
35	NE qr	7	73	36	160.00	
36	SW qr	9	69	37	160.00	
37	S W qr	15	do	do	160.00	
					5,377.40	

SAMUEL J. KIRKWOOD.

Statement—Continued.

No.	Parts of section.	Sec.	Town.	R'ng.	Area.	Remarks.
38	E half of sec. and NW qr	17	69	37	480.00	Second page.
39	NE qr E half of NW qr, and SW qr of NW qr	29	do	do	281.35	
40	NW qr	21	do	do	160.00	
41	NW qr	29	do	do	160.00	
42	W half of SE qr, and E half of SW qr	25	70	37	160.00	
43	W half of SE qr, and NE qr of SW qr,	29	73	37	120.00	
44	SE qr of SE qr	7	74	37	40.00	
45	N half of NW qr, and SW qr of SW qr	17	do	do	120.00	
46	NW qr of NE qr	13	73	38	40.00	
47	SW qr of NW qr, NW qr of SW qr	11	74	38	80.00	
48	Whole of	5	69	39	607.94	
49	Do.	7	do	do	630.64	
50	E half of NW qr, and SW qr of NW qr	1	70	39	119.10	
51	E half of SW qr, and SW qr SW qr	do	do	do	120.00	
52	NW qr	13	do	do	160.00	
53	N half of SW qr	5	69	40	80.00	
54	S half of SW qr, and SE qr of NE qr	do	do	do	120.00	
55	W half of SW qr, and SE qr of NE qr	do	do	do	120.00	
56	N ½ of NE qr, and N ½ of NW qr, and SW qr of NW qr	7	do	do	207.53	
57	SE qr, S half of NE qr	1	70	40	239.94	
58	W half of sec., and SW qr of NE qr	13	do	do	360.00	
59	NE qr, W half of SE qr, and E half of SW qr	23	do	do	320.00	
60	SE qr. SE qr of NE qr, and SE qr of SW qr	27	do	do	240.00	
61	SE qr, S half of NE qr, and SE qr of SW qr	33	do	do	280.00	
195	[Second page continued.]					
62	W half of SW qr, and W half of NW qr	33	70	40	160.00	
63	SW qr, E half of NW qr	1	73	40	235.23	
64	W half of NW qr, and W half of SW qr	3	do	do	155.85	
65	Whole of	9	do	do	640.00	
66	S ½ of SE qr, & NE qr of SE qr	11	do	do	120.00	
67	S ½ of sec. NW qr, S ½ NE	15	do	do	560.00	
68	E half of SW, W half SE, and SE qr of SE qr	17	do	do	200.00	
69	N half of sec	21	do	do	320.00	
70	SE qr, W half of NE qr, and SE qr NE	15	74	40	280.00	
71	E ½ of NW qr, & SW qr NW	21	do	do	120.00	
72	SW qr of NE qr, and SE qr	27	do	do	200.00	
73	E half of SE qr	33	do	do	80.00	
74	Whole of	5	69	41	626.80	
					8,944.38	

SAMUEL. J. KIRKWOOD.

Statement—Continued.

No.	Parts of section.	Sec.	Town.	R'ng.	Area.	Remarks.
75	SE qr of NE qr, and NE qr SE qr	7	69	41	80.00	Third page.
76	S half of sec., and E half of NE.	9	do	do	400.00	
77	SW qr of NE qr, and SW qr of NW qr	do	do	do	80.00	
78	S half of sec., S half NE, and S half NW	11	do	do	480.00	
79	NW qr, W half of SW qr	3	70	41	234.83	
80	S half of sec, N half of NW qr NE qr	5	do	do	541.48	
81	S half of NW qr	do	do	do	80.00	
82	E half of NE qr, and E half of SE qr	7	do	do	160.00	
83	Whole of	9	do	do	640.00	
84	NW qr of NW qr	15	do	do	40.00	
85	E half of sec. NW qr	17	do	do	480.00	
86	W half of SW qr, and NE qr of SW qr	do	do	do	120.00	
87	E half of SE qr, and SW qr of SE qr	19	do	do	120.00	
88	E half of sec	21	do	do	320.00	
89	W half of NW qr	27	do	do	80.00	
90 90	W half of sec., W half of NE qr, and W half of SE qr	29	do	do	480.00	
91 91	E half of NE qr E half of SE qr and SW qr of SE qr	31	70	41	200.00	
92 92	S half of SE qr S half of SW qr and NW qr of SW qr	33	do	do	200.00	
93	W half of sec.	27	71	41	80.00	
94	SE qr of SE qr	31	do	do	40.00	
95	E half of sec. and SW qr	33	do	do	480.00	
96	E half of NW qr and NW of NW qr	do	do	do	120.00	
97	SE qr of SE qr	13	73	44	40.00	
98	W half of NW qr	15	74	do	80.00	
99	NE qr of SE qr	21	do	do	40.00	
100	E half of SE qr and SW qr of SE qr	29	do	do	120.00	
101	NE qr of SW qr and N half of SE qr	1	73	42	399.07	
102	NE qr E half of SW qr	5	do	do	234.00	
103	E half of NE qr and E half of SE qr	11	do	do	160.00	
104	NW qr of NW qr	13	do	do	40.00	
105	W half of NW qr	33	74	42	80.00	
106	W half of NE qr and E half of NW qr	3	69	43	145.42	
107 107	E half of sec. E half of SW qr and SE qr of NW qr	5	do	do	429.30	
108	NE qr of SW qr and SW qr of SW qr	1	70	43	80.00	
109	W half of sec	3	do	do	310.45	
110	Lots 1, 3, and 4, and NE qr of NE qr	5	do	do	182.45	
111	E half of SE qr and SW qr of SE qr	do	do	do	120.00	
					7,908.00	

SAMUEL J. KIRKWOOD.

Statement—Continued.

No.	Parts of section.	Sec.	Town.	R'ng.	Area.	Remarks.
197						
112 112	S half of sec. W half of NW qr and SE qr of NW qr	9	70	43	440.00	Page four.
113	E half of NE qr and SW qr of NE	do	do	do	120.00	
114	W half of sec.	11	do	do	320.00	
115 115	S half of sec. S half of NE qr and S half of NW qr	15	do	do	480.00	
116	NW qr SE qr SW qr of NE qr.	17	do	do	360.00	
117	E half of SW qr and NW qr of SW qr	do	do	do	120.00	
118	Lot 3	19	do	do	44.80	
	[Page four continued.]					
119	NW qr SE qr E half of NE qr.	21	70	43	400.00	
120	N half of sec. S half SE and S half SW	27	do	do	480.00	
121	E half of sec. W half of NW qr and W half SW	29	do	do	480.00	
122	S half of sec. E half of NE qr NE NW	31	do	do	399.53	
123	W half of sec SE qr W half of NE qr	33	do	do	560.00	
124 124	NW qr W half of SW qr and NW qr of NE qr	21	71	43	280.00	
125	E half of sec.	29	do	do	320.00	
126 126	SE qr S half of NE qr and NW qr of NE qr	33	do	do	280.00	
127	E half of SW qr and SE qr of NW qr	do	do	do	120.00	
128	W half of SW qr and SE qr of SW qr	35	do	do	120.00	
129	SW qr of SE qr	35	71	43	40.00	
130	E half of SE qr and NW qr of SE qr	1	73	43	120.00	
131	E half of NW qr and E half of SW qr	17	do	43	160.00	
132	E half of NE qr and NW qr of NE qr	13	do	44	120.00	
133	NE qr of SE qr	do	do	do	40.00	
					5,804.33	

RECAPITULATION.

Page 1	5,377.40
do 2	8,944.38
do 3	7,908.00
do 4	5,804.33
	28,034.11

Making a total of twenty-eight thousand and thirty-four acres and eleven hundreths of an acre. [Between the six and fifteen mile limits.]

SAMUEL J. KIRKWOOD.

198 GENERAL LAND OFFICE, *March 14th*, 1862.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the foregoing on pages one to four inclusive is a true and correct list of the tracts of land selected by the agent of the State of Iowa, outside of the six, and within the fifteen mile limits, under the act of Congress approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections to aid in the construction of certain railroads in said State," the said selections being from the lands of the United States in the alternate designated by odd numbers, most contiguous to the tier of sections within six sections in width on each side of the railroad "from Burlington on the Mississippi river to a point on the Missouri river near the mouth of the Platte river," known as the "Burlington and Missouri River railroad," and being in lieu of the land in the alternate sections designated by
the odd numbers within said six sections in width on each
199 side of said road which the United States has legally sold or
to which the right of pre-emption had legally attached prior
to the period at which the rights of the State inured under said grant, and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of the 15th of May, 1856, subject to all its conditions and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name, and caused the seal of the General Land Office to be affixed at the city of Washington on the day and year first herein above written.

J. M. EDMUNDS, *Commissioner.*

DEPARTMENT OF THE INTERIOR,
March 21st, 1862.

Approved subject to the conditions and rights above mentioned.

CALEB B. SMITH, *Secretary.*
SAMUEL J. KIRKWOOD.

200 UNITED STATES OF AMERICA, *State of Iowa:*

Know ye that I, Samuel I. Kirkwood, governor of the State of Iowa, and keeper of the great seal thereof, do hereby certify that the foregoing papers, that is to say a paper purporting to be a certificate of J. M. Edmunds, Commissioner of the General Land Office, dated General Land Office, March 25th, 1862; also a paper purporting to be a supplemental list of lands in the district of lands subject to sale at Council Bluffs outside of the six and within the fifteen mile limits of the reserve to satisfy the grant to the State of Iowa, by the act of Congress approved the 15 of May, 1856, entitled "An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State being the lands selected by the agent of the governor of the State of Iowa from the lands of the United States in alternate sections and parts of sections designated by odd numbers nearest to the tiers of sections within six sections in width on

201 each side of the railroad from Burlington on the Mississippi river to a point on the Missouri river near the mouth the Platte river, and in lieu of lands in the alternate sections designated by odd numbers within said six sections in width, which the [the] United States had legally sold or otherwise appropriated, or to which the rights of pre-emption have attached, said list occupying four pages and numbered by pages 1, 2, 3, and 4, and a paper purporting to be a copy of a certificate of J. M. Edmunds, Commissioner, dated General Land Office, March 14, 1862, to which is attached the words, "Approved, subject to the conditions and rights above mentioned," purporting to be signed by Caleb B. Smith, Secretary, and dated Department of the Interior, March 21, 1862, on each and all of which papers and pages I have affixed my signature by of attestation on the right hand lower corner, and true copies of the originals transmitted to me, and by me deposited for safe keeping in
202 the office of the register of the State land office of the State of Iowa.

(Signed) SAMUEL J. KIRKWOOD.

In testimony whereof I have hereunto set my hand, and caused to be affixed the great seal of the State of Iowa.

Done at Des Moines this twelfth day of April, in the year of our Lord one thousand eight hundred and sixty-two, of the independence of the United States the eighth-sixth, and of this State the sixteenth.

SAMUEL J. KIRKWOOD.

By the Governor:
(Signed) ELIJOH SELLS,
Secretary of State.

203 PLAINTIFF'S EVIDENCE.

Certificates and depositions.

204 GENERAL LAND OFFICE,
September 30th, 1854.

"Register and Receiver, Kanesville, Iowa:

"GENTLEMEN: You will please, on receipt from the surveyor general of the list of swamp and overflowed lands selected for the State of Iowa in your district, note each tract therein embraced in its proper place, on your tract books, in pencil, and decline to permit any entries or locations upon any part of the same.

"Very respectfully, your ob't serv't,
"JOHN WILSON, *Commissioner.*"

STATE OF IOWA, *Pottawattime County, ss:*

I, Frank Street, register of the local land office at Council Bluffs, Iowa, do hereby certify that the above and foregoing is a true, perfect and complete copy of the original letter or order from the Commissioner of the General Land Office at Washington, D. C., withdrawing from [from] the market all lands situated in my district which were selected as swamp and overflowed lands.

205 In testimony whereof, I have hereunto set my hand officially this 15th day of March, 1865.

FRANK STREET,
Register of the United States Land Office at Council Bluffs.

[Int. rev. F. S., Mch. 15, 1865.]

Certified copy of letter from Commissioner of Gen'l Land Office.

Endorsed: "H," filed Sept. 2nd, 1865. J. L. Mitchell, clerk.

206 GENERAL LAND OFFICE,
April 22nd, 1865.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the annexed copy of a letter dated the 20th August, 1856, from this office to the secretary of state of Iowa, is a true and literal exemplification of the original as on record in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[SEAL.] J. M. EDMUNDS,
Commissioner of the Gen'l Land Office.

[Int. rev. A. H., April 22, 1865.]

207 GENERAL LAND OFFICE,
August 20, 1856.

Geo. W. McCleary, Secretary of State of Iowa, at Iowa city:

SIR: I have the honor to acknowledge the receipt of your communication of the 12th inst., enclosing a certified copy of the act of the State legislature, approved on the 14 July, 1856, to accept the grant and to carry into execution the trust conferred upon the State of Iowa by the act of Congress making the grant of lands for railroads, approved May 15th, 1856, which has been placed on the regular file in this office.

It is observed that the 6th section of the law directs that "it shall be the duty of the governor, after affixing his official signature, to file such map in the department having the control of the public lands in Washington. *Such location being considered final only so far as to fix the limit and boundary within which lands may be selected.*" The part which I have italicized appears to me to
208 conflict directly with the act of Congress, which contemplates that the route shall be "definitely fixed," and it is proper that I should through you, in this early stage of the business, call the attention of the State executive and the companies to the matter and announce the opinion of this office, so as to prevent unnecessary delay.

A route merely for fixing the limits of the grant will not be acted upon; it must be something real and fixed; the grant cannot be in

one place and the actual route in another; although slight variations of the line, such as are unavoidable in the progress of construction of such works, would be admissable; any material changes of the route would be considered acting in bad faith with the United States, and cannot be tolerated; for such would be a clear violation of the law which proposes an indemnity to the United States for the land granted away by the enhanced value of the alternate sections remaining to the government near the route of the road. The route of the road must therefore be first definitely fixed as required
209 by the law of Congress, or no title vests.

In the above view it is expected that the certificate of the governor on the maps returned to this department will set forth that such maps delineate the routes as "definitely fixed," that is, on final locations, before they can receive our action.

I am very respectfully, your ob't servant,

JOSEPH S. WILSON,
Acting Commissioner.

Endorsed: Filed Sept. 2nd, 1865. J. L. Mitchell, clerk.

210 At an adjourned meeting of the directors of the Burlington and Missouri River railroad, held at Burlington, March 24, 1857, it was—

"*Resolved,* That the map or platt herewith presented by the chief engineer, showing the location or route of the Burlington and Missouri River railroad as fixed by him, in pursuance of the resolution of the board of directors passed on the 25 day of July, A. D. 1856, as will appear by reference to the records of said company, be hereby accepted and the line as fixed and designated on said map or platt be, and is hereby, declared as definitely fixed in compliance with the act of the legislative assembly of the State of Iowa, approved July 14, 1856, and in pursuance of the order of the board of directors."

The above is a true copy of so much of the record of the adjourned meeting of board of directors of B. & M. R. R., held March 24, 1857, as relates to the map of location.

C. E. PERKINS, *Secretary.*

Endorsed: "J." Filed Sept. 2nd, 1865. J. L. Mitchell, clerk.

211 CHICAGO, ILL., *Sept. 4th.* 1856.

SIR: For and in behalf of the State of Iowa, and the four several railroad companies, which by the act of the legislative assembly of said State approved July 14th, 1856, were constituted the beneficiaries of the grants of lands made to said State by the act of Congress approved May 15th, 1856, and as the legally appointed agent of said State and of said companies, I hereby select the unsold lands in the sections and parts of sections designated by odd numbers between the six and fifteen mile limits on each of the roads, to make up the deficiency caused in the odd numbered sections within the six mile limits, by sales or valid pre-emption rights existing prior to the grants made to said State by said act of Congress.

Very respectfully, your ob't serv't,

BERNHART HENN, *Agent, &c.*

Hon. THOS. A. HENDRICKS,
Commissioner of Gen'l Land Office, Washington City, D. C.

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212 GENERAL LAND OFFICE,
January 17th, 1865.

I, J. M. Edmunds, Commissioner of the General Land Office, certify that the foregoing, purporting to be a letter of Bernhart Henn to the Commissioner of the General Land Office, dated Chicago, Ill., Sept. 4th, 1856, is a true and correct copy of the original now on file in this office.

Given under my hand and the seal of the General Land Office at Washington city, the date above written.

[SEAL.] J. M. EDMUNDS, *Commissioner.*

Endorsed: "K." Filed Sept. 2nd, 1865. J. L. Mitchell, clerk.

[Int. rev. J. M. E., Jan. 17, 1865.]

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213 OFFICE OF THE BURLINGTON AND MISSOURI
RIVER R. R. CO., 48 CITY EXCHANGE,
Boston, 2nd Mo., 26th, 1858.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

Edward L. Baker, president of the Burlington and Missouri River Railroad Company, having duly affirmed, according to the statute in such case made and provided, doth depose and say, that the road of said company has been completed and the regular trains both for business and passengers running over it, from the borders of the Mississippi river, at Burlington, to Mount Pleasant, in Henry county, Iowa, a distance of twenty-eight miles, of his own knowledge, and that he is informed and fully believes that it is now completed and the trains running in the same manner to the place formerly called Rome, now Checauqua, on the west side of the Skunk river, in Jefferson county, about eight miles further. And further the deponent saith not.

EDW'D L. BAKER,
President of Burlington and Mo. River R. R. Co.

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213 STATE OF MASSACHUSETTS,
County of Suffolk, City of Boston, ss:

I, Geo. T. Angell, commissioner of the State of Iowa, resident of Boston, in said Suffolk, duly commissioned and qualified by the governor, and under the laws of Iowa, to take depositions, affidavits, acknowledgments of deeds, &c., to be used or recorded in Iowa, do certify that in Boston, aforesaid, this February 26th, 1858, personally appeared before me Edward L. Baker, aforesaid, and who subscribed the foregoing affidavit, and he did then and there in due form of law solemnly affirm under the pains and penalties of perjurors, that all the matters and things therein stated were true, he having conscientious scruples against the taking of an oath.

Witness my hand and official seal at Boston aforesaid, this February 26th, 1858.

[L. S.] GEO. T. ANGELL,
Commissioner of Iowa, in Boston.

214 STATE OF IOWA, *Secretary's Office, ss:*

I, James Wright, secretary of state of the State of Iowa, hereby certify that the foregoing is a true and correct copy of the affidavit or affirmed statement of Edward L. Baker, (with the certificate of George T. Angell thereto attached,) relating to the completion of the Burlington and Missouri River railroad from Burlington to Mount Pleasant, which said statement is on file in this office, and I further certify that I can find no statement or report showing the completion of said road farther west, the said statement of E. L. Baker being all the evidence I can find on file in this office of the completion of any part of said road.

Witness my hand the great seal of the State of Iowa.

Done at Des Moines, this October 5th, A. D. 1864.

[L. S.] JAMES WRIGHT,
Secretary of State.
Per E. M. WRIGHT, *Deputy.*

Fees, $1 00; p'd by Harvey.

[Int. rev., J. W., 5. Oct., 1864.]

215 STATE OF IOWA, *Executive Department, ss:*

I, W. M. Stone, governor of the State of Iowa, certify that I am unable to find in the executive department of the State government any evidence of the completion of any portion of the Burlington and Missouri River railroad except the statement of Edward L. Baker, of which a true copy is exhibited above.

In testimony whereof, I have hereunto set my hand and caused to be affixed the great seal of the State of Iowa.

Done at Des Moines, this 14th day of April, A. D. 1865.

W. M. STONE.

By the governor
JAMES WRIGHT,
Secretary of State.
Per E. M. WRIGHT, *Deputy.*

Fee, p'd by Harvey, $1 00.

[Int. rev., 14 April, 1865, W. M.]

Endorsed: "L." Filed September 2d, 1865. J. L. Mitchell, clerk.

216 In the District Court of Fremont co., Iowa.

FREMONT COUNTY
vs.
THE BURLINGTON & MISSOURI RIVER
Railroad Company.
} Chancery.

The defendant in the above-entitled cause will take notice that on the 17th day of February, 1865, before competent authority, at the office of the clerk of the District Court of Fremont co., Iowa, at Sidney, in said county, and between the hours of 8 o'clock a. m. and 8 o'clock p. m. of said day, I will proceed to take depositions of Fredrick Rector, Alexander Leitch, Jas. A. Hodges, L. Lingenfelter, J. D. Blanchard, Alexander Wilson and others, to be read in evidence on behalf of plaintiff on the trial of said cause. And if said depositions are not completed on said day, the taking thereof will be continued from day to day, at the place and between the hours aforesaid, till all are taken.

J. A. HARVEY,
Solicitor for Plaintiff.

217 STATE OF IOWA, *Des Moines County*, *ss:*

I received this notice Jan'y 5, 1865, and January 6, 1865, I served this notice on the Burlington and Missouri River Railroad Company by reading the same to Charles E. Perkins, acting superintendent and manager of the business of said company, in the city of Burlington, Iowa, and delivering to him a true copy thereof.

M. HEISEY,
Sheriff Des Moines County, Iowa.

Service	50
Copy	20
M'l'ge	10
	80c.

Paid by plaintiff.

218 In District Court of Fremont county, Iowa.

FREMONT COUNTY
vs.
B. & M. R. R. R. Co.
} Chancery.

Depositions of witness taken before me, J. L. Mitchell, clerk of the District Court of Fremont county, Iowa, at the clerk's office in said county, on the 17th and 18th days of February, A. D. 1865, between the hours of 8 o'clock, a. m. and 8 o'clock, p. m., pursuant to the notice hereunto attached, to be used in evidence on the trial of the above-entitled cause on behalf of the plaintiff.

L. Lingenfelter, of lawful age, being produced, sworn, and examined, deposes and answers as follows, to wit:

Int. 1st. State your age, profession, and residence.

Ans. 1st. I am fifty years old; my residence is Sidney, Iowa, and I am a lawyer by profession.

Int. 2d. How long have you been living in and practicing law in Sidney, Fremont county, Iowa?

Ans. Fourteen years.

219 Int. 3d. State what you know about the Burlington and Missouri River Railroad Company surveying a line for their road through this county, and what inducements they held out to the people to subscribe stock and donate property to the company.

Ans. Mr. Hibbard, engineer of said road, was here in the winter of 1856 and 1857, with his corps of surveyors, surveying a line for said road from Red Oak Junction in Montgomery county, through this county to Nebraska city. He said to me in conversation, (and I think, to a meeting of citizens called for the purpose of taking stock in the road,) that he had run a preliminary survey to the mouth of Platte river, but that the line was not established, and that he was hunting out the most practicable route, and that they were not confined to the mouth of the Platte river, but that Nebraska city would be sufficiently near to be within the provisions of the charter, and that if we (the citizens of Fremont co.) would subscribe or donate more than they would in Mills county, we would get the road through this county. This meeting was called at the instance
220 of the said Hibbard and two or three directors of the company that were with him. And I, and others, did subscribe $50 and $100 each, and afterwards paid it.

Int. 4th. State when these things took place, and on what conditions you subscribed.

Ans. 4th. It was in the winter after the survey through Mills county. The conditions were, I think, these; If the Mills county got the road our subscription were to be stock, and we could have that much stock in the company. But if we got the road, then our subscriptions were to be simply donations, or a bonus to the road.

Int. 5th. What did said engineer and directors say as to the time when the line would be permanently located?

Ans. 5th. They said that after the completion of the different surveys, the directors of company would meet at an early date to determine which route should be adopted, and that they would take into consideration the inducements held out by the citizens for the different routes.

221 Int. 6th. Was scrip issued to you as stock for your subscription?

Ans. 6th. After the board directors had met and adopted the line through Mills county they notified us of that fact, and issued scrip to us as stock for our subscriptions.

Int. 7th. State what you know about Fremont county contracting to sell the lands in controversy in this suit; on what terms and what was done with money received for it.

Ans. 7th. I know that a large amount of said lands was sold by the county to persons who paid one-half of the purchase money down and gave their notes for the balance, and the money received for said lands was expended for the purpose of draining and reclaiming the swamp and overflowed lands in the county.

Int. 8. State as near as you can what amount of money the county has expended for the purpose of reclaiming and draining said swamp and overflowed lands, and how they expended it.

222 Ans. 8th. I cannot state the exact amount. On the Missouri river bottom, where some of this land lies, and in other places on said bottom there were large ponds or lakes covering many sections, making them marshy and too wet for cultivation, but the county has cut ditches and drained them off dry. The county has drained, I think all the swamp land in the county that could be drained, and I think, expended not less than fifty thousand dollars. She employed engineers to lay off the drains and made one very large ditch, at least fifteen feet wide, through the county on the Missouri river bottom, that drains a great amount of land; and that a great deal of the land in controversy which was originally covered with lakes and swamps have been thus drained and made dry land, and made the land in controversy as well as other swamp valuable.

L. LINGENFELTER.

Subscribed and sworn to before me this 17th day of February, 1865.

J. L. MITCHELL, *Clerk.*

The further taking of depositions in this cause is now adjourned till to-morrow morning, (Feb. 18,) between 8 o'clock a. m. and 8 o'clock p. m.

FEBRUARRY 18TH, 1865.

223 The taking of depositions is now continued pursuant to adjournment.

A. Leitch, of lawful age, being produced, sworn and examined, deposes and answers as follows, to wit:

Int. 1st. State your name, age, place of residence, and how long have you lived in this county.

Ans. 1st. My name is A. Leitch; my age, 39 years, and I have resided in this county about ten years.

Int. 2d. State what you know about the Burlington and Missouri River Railroad Company surveying a line for their road through this county to Nebraska city.

Ans. 2d. Mr. Hibbard, engineer, and other gentlemen composing the company, surveyed a route through this county for the above-described railroad in the fore part of the year 1857.

224 Int. 3d. State whether the county had contracted to sell the lands in controversy; and state what she has done towards draining these and other swamp lands.

Ans. 3d. This county has bargained, sold, and agreed to convey most of the swamp lands of this county, and has expended a large amount of money in ditching and trying to reclaim said lands.

Int. 4th. State how much money she has thus expended.

Ans. 4th. She has expended many thousands of dollars, but I cannot say as to the amount.

A. LEITCH.

Subscribed and sworn before me, by A. Leitch, this 18th day of February, 1865.

J. L. MITCHELL,
Clerk of the Dist. Court of Fremont County, Iowa.

225 John Hiatt, of lawful age, being produced, sworn, and examined, deposes and answers as follows, to wit:

Int. 1st. State your name, age, and place of residence.

Ans. My name is John Hiatt; I am fifty-six years old, and I reside at Sidney, Fremont county, Iowa.

Int. 2d. State how long you have lived in this county.

Ans. I have been living in this county eleven years.

Int. 3d. State what you know about the Burlington and Missouri River Railroad Company surveying a line for their road through this county to Nebraska city.

Ans. In the winter of 1856 and 1857, I think in February, 1857, Mr. Hibbard with other engineers surveyed a line through this town for the company.

Int. 4th. State what inducements they held out to you and
226 other citizens here to make donations or subscriptions to the road.

Ans. They represented that they had run another line through Mills county to the mouth of Platte river, and that the line that received the amount of subscription or donations from the citizens would be the one adopted by the company, and so far as the location and the nature of the ground was concerned, the route through this county had the advantage of the other, and many citizens subscribed and afterwards paid their money, as I understood.

JOHN HIATT.

Subscribed and sworn to before me, by John Hiatt, this 18th day of February, 1865.

J. L. MITCHELL, *Clerk.*

STATE OF IOWA, *Fremont County:*

227 I, J. L. Mitchell, clerk of the District Court of said county, do hereby certify, that the foregoing depositions of L. Lingenfelter, A. Leitch, and John Hiatt, were taken before me at my office, in said county, on the 17th and 18th days of February, 1865, between the hours of 8 o'clock a. m. and 8 o'clock p. m., pursuant to the notice hereunto attached; that the witness was by me first duly sworn to testify in said cause, and his deposition reduced to writing

by me, except two and one-half lines at the close of said deposition, which the said witness himself wrote; that they were then read over by me to said witness and by him subscribed and sworn to before me on said 17th day of February, 1865; that the further taking of depositions was then continued till this the 18th day of February, at which time and at the place and between the hours aforesaid, the depositions of the said A. Leitch and John Hiatt were taken; that 228 witnesses were by me each first duly sworn to testify the truth in said cause; that the depositions of the said John Hiatt were reduced to writing by me, and that the interrogations in the deposition of the said A. Leitch were written by me and his answers thereto written by the said witness himself in my presence; that the said depositions were then read over to said witness respectively, and by them subscribed and sworn to before me, on this the 18th February, 1865.

In testimony whereof, I have set my hand and affixed my official seal. Done at my office, in Sidney, in said county, the date last above written.

J. L. MITCHELL,
Clerk of the Dist. Court of said County.

[Int. rev. Feb. 18, 1865. J. L. M.]

Endorsed: 2d batch, depositions. Sidney. Fremont county *vs.* The B. and M. R. R. R. Co. Depositions of Lingenfelter, John Hiatt, and A. Leitch. Filed Feb. 18, 1856. J. L. Mitchell, clerk. Clerk's fee for taking, $4 50.

229 1st batch deposition, (Glenwood,) Fremont County *vs.* The B. and M. R. R. R. Co. Filed February 20th, 1865. J. L. Mitchell, clerk.

Fees for taking depositions	$5 00
Witness Lathrop	1 50
J. Solomon	1 00
D. H. Solomon	1 00
Wm. Street	1 00
H. C. Watkins	1 00
Postage	30

Paid by plaintiff's attorney.

230 In District Court of Fremont county, Iowa.

FREMONT COUNTY
vs.
THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY.
} Chancery.

The defendant in the above cause will take notice that on the 15th day of February, 1865, between the hours of 8 o'clock a. m. and 8 o'clock p. m., at the office of the clerk of the District Court of Mills county, Iowa, at Glenwood, in said Mills county. before competent authority, I will proceed to take the depositions of N. Lathrop, Joel Solomon, D. H. Solomon, H. C. Watkins, J. M. Dews, A. B. Wright, R. B. Townsend, Frank Street, J. L. Sharp, J. W. Coolridge, Wm. Street, and others, to be read in evidence on behalf of plaintiff, on the trial of said cause; and if said depositions are not completed on the said day, the taking thereof will be continued from day to day, at the place and between the hours aforesaid, till all are taken.

J. A. HARVEY,
Att'y for Plaintiff.

231 STATE OF IOWA, *Des Moines County*, *ss* :

I received this notice January 5th, 1865; and on January 6th, 1865, I served this notice on the Burlington and Missouri River Railroad Company, by reading the same to Charles E. Perkins, acting superintendent and manager of the said company, in the city of Burlington, Iowa, and delivering to him a true copy thereof.

M. HEISEY,
Sheriff of Des Moines Co., Iowa.

Service	$0 50
Copy	20
M'l'ge	10
	$0 80

Paid by plaintiff.

Endorsed: Dist. Court of Fremont co. Fremont County *vs.* B. & M. R. R. R. Co. Notice to take depositions, (at Glenwood.) J. A. Harvey, for plaintiff.

232 Deposition of witnesses taken before H. A. Copeland, clerk of the District Court in and for Mills county, Iowa, in pursuance with the foregoing notice, at my office in Glenwood, in said county, on 15th, 16th, and 17th days of February, A. D. 1865, to be read in evidence in a suit pending in the District Court of Fremont county, Iowa, in which Fremont county, Iowa, is plaintiff, and The Burlington and Missouri River Railroad Company is defendant.

On the part of said plaintiff, N. Lathrop, being duly sworn, deposeth and says:

Question 1st. What is your name, age, and place of residence; and are you acquainted with the parties to this action?

Ans. My name is Nelson Lathrop; age, 56 years; I reside in Mills county, Iowa, and have some knowledge of the parties to this action.

Ques. 2nd. Were you, or were you not, in the employ of the Burlington and Missouri River Railroad Company, the defendant herein? And if so, state when and in what capacity did you act.

Ans. I was in the employ of the company. I acted as a
233 director; I was elected director in May or June, 1856, and I
acted in that capacity for one year.

Question 3d. State what you know with regard to the adoption of the line or lines of said road, or surveys thereof, by the board of directors of said company, when the same was adopted, and all the particulars in relation thereto.

Ans. The first preliminary survey was made in the early part of the summer of 1856, upon which the board proceeded to make a location, and made out their plats of land and forwarded to the different land offices, and received letters from the different land offices and from the General Land Office that the land could not be located until a permanent survey was made, and accordingly rejected the plats first forwarded. The company then went to work and made a permanent survey, upon which a location was made by the board of directors, in the latter part of March or first of April, 1857—I think in April. I was a member of the board of directors at the time these transactions were had.

234 Question 4th. Was or was you not one of a committee on the part of the board of directors of said company to go to Iowa city, Iowa, at the time the grant was made by the State of Iowa to certain railroad companies, which was passed by the legislature of said State July 14th, 1856? And if so, state for what purpose you was so appointed by said board, and what you did in your official capacity in behalf of said railroad company; the defendant herein, and particularly what was done with reference to lands which had been selected as swamp and overflowed lands, and give all the particulars in reference thereto.

Ans. I was one of such committee on behalf of said company, the defendant herein, and I went to Iowa city, and was there at the time the said act was passed. The committee appointed by the said board went for the purpose of receiving and accepting the grant from the State, on behalf of the Burlington and Missouri River Railroad Company. We received the grant of lands, and there was no
mention made of swamp lands, and we had no expectation
235 whatsoever of getting any swamp lands by the said grant;
during the time the road was under the control of Iowa directors, there was no expectation whatsoever or intention on the part of said railroad company, the defendant herein, to get or claim any lands which had been selected as swamp and overflowed lands, nor was there ever any such lands claimed by the defendant herein until the road passed into the control of eastern men, not residents of the State of Iowa.

Ques. 5th. State if you know about what time the control of said road passed into the hands of said eastern men, and how they obtained such control.

Ans. I think it was in the month of May or June, 1857; they got control of the road by subscribing $500,000 worth of stock, which gave them a majority of the stock; and on that ground they elected the directors from eastern States except one or two from Iowa. I am not positive of the exact amount they subscribed, but I am positive it was sufficient to give them a majority of the stock of said company.

236 Ques. 6th. Did or did you not, by yourself or in company with others, receive an appointment by the board of directors of the defendant herein to go out west along the line of said road in Iowa, for any purpose? And if so, state at what time you received said appointment, what you was authorized to do for and on behalf of said board, and what you did do. Please give all the particulars.

Ans. Judge Newman and myself were appointed in August or September, 1856, by the board of directors of said company for the purpose of passing along the line west of said road to solicit money and real estate for said company, and also to solicit of the several counties the lands which had been selected as swamp and overflowed lands. We passed along the line of the road as far as the Missouri river west, and did solicit and receive donations of money, lands and town lots for said company.

Ques. 7th. Did or did you not for and in behalf of said company, in the capacity above referred to, solicit of Fremont county the donation of lands lying in said county which had been selected as swamp and overflowed lands? 237

Ans. I did.

Ques. 8th. What counties did you as agent of said company solicit to give lands selected as swamp lands to the railroad company?

Ans. Mills and Fremont counties, and in fact all the counties in the two southern tiers of counties in Iowa, west of Des Moines river, in which there was any swamp lands, except Davis county.

Ques. 9th. State if you know to what point or the number of miles said road was completed on the 5th day of May, 1856, and at what time it was completed to Mount Pleasant and to Ottumwa, Iowa, and to where is it now completed.

Ans. I think there was about fifteen miles of the road completed the 15th of May, 1856; and I think it was completed to Mount Pleasant in May, 1857, and to Ottumwa in the latter part of the year 1858, or the forepart of the year 1859; I think it is not built beyond Ottumwa, and I was so informed by the agent a short time since. 238

Ques. 10th. Where did you reside previous to movinig to Mills county, Iowa, and at what time did you move to Mills county, Iowa, and how long did you reside here?

Ans. I resided in Mount Pleasant, Iowa; I removed from that place to Mills county, Iowa, in 1862; I had resided in Mount Pleasant twenty-two years previous to my moving to Mills county.

N. LATHROP.

239 Joel Solomon, being produced, sworn, and examined, answers as follows:

Ques. 1st. What is your age, where do you reside, and how long have you resided there?

Ans. My name is Joel Solomon; age 64. I reside in Glenwood, Mills county, Iowa. I have resided there between 8 and 9 years.

Ques. 2nd. State whether you are acquainted with the parties of this suit.

Ans. I am acquainted with Fremont county, and know the Burlington and Missouri River Railroad Company by reputation.

Ques. State when, if you know, the line of the Burlington and Missouri River Railroad Company was located through Mills county.

Ans. I do not know when the survey was made, but I was informed by some of the directors of the company that the line was adopted and definitely fixed by the board of directors of the company in the month of March or April, 1857. I think it was at an adjourned meeting of the board the line was adopted, as I understood.

240 Ques. 4th. State whether it was understood by the citizens in this part of the State that the line was located in the fall of 1856.

Ans. It was generally understood that it was not until the spring of 1857, in March or in April, as before stated.

Ques. 5th. State whether the R. R. Co. or their agents did not hold out to the people after the survey was made the idea that the line was not permanently located, and that the location might depend to some extent on local subscriptions to the stock of said road.

Ans. I do not know at what time the survey was made, but I do know that in the winter of 1856 and 1857 that idea as an inducement was held out by some of the directors to the citizens here to subscribe, on the grounds that such subscriptions would effect the location of the road.

Ques. 6th. State who held out such inducements, and what they said as near as you can remember.

Ans. Newman and Lathrop were here, and I think in the month
of February Thomas W. Newman, one of the directors, en-
241 tered into a contract with me for property at Plattsmouth at
mere nominal figures, for which I executed a bond to him binding myself to deed to the company, upon the location of the road through Mills county, to terminate on the east bank of the Missouri river, opposite Plattsmouth.

Ques. 7. State what he said to induce you to make that contract.

Ans. He stated that unless the people here donated pretty freely to the company they might be induced to change the route to Bellview, which is some twelve miles north of Plattsmouth, leaving Glenwood off the line, as I understood it.

Ques. 8. State whether Mills county made any donations to said company to induce them to locate said road through or by Glenwood, and if so, state the particulars.

Ans. On the 17th of October, 1856, the county judge of Mills county executed a bond to the company agreeing to donate to the
company, as an inducement to secure the location of the road
242 by Glenwood, two blocks and six lots in said town.

Ques. 9. State whether this I now hand you is a correct copy of said bond.

(A copy of said bond is here presented to the witness.)

Ans. It is. I have compared it with the original as recorded in the recorder's office in Mills county, in book D, page 312.

Ques. 10. How much were those lots estimated to be worth at that time?

Ans. Two thousand dollars at least.

Ques. 11. Has that property been conveyed by the county to said company?

Ans. It has not.

Ques. 12. Would you know if such conveyance had been made?

Ans. I would, as I keep an abstract of titles in said county and take an account of all conveyances of real estate.

J. SOLOMON.

The further taking of depositions in this cause is adjourned till tomorrow at 8 o'clock a. m.

H. A. COPELAND, *Clerk.*

243 THURSDAY MORNING, *February* 16, 1865.

Pursuant to adjournment, I proceeded to the further taking of depositions in this cause.

D. H. Solomon, of lawful age, being produced and duly sworn, deposes and says, as follows:

Ques. 1st. State your place of residence, and how long you have resided there, and your profession.

Ans. Glenwood, Mills county, Iowa. I have resided there eleven years, and I am a lawyer by profession.

Ques. 2nd. State whether you are acquainted with the parties to this action.

Ans. I know them both by reputation and otherwise, and have for many years.

Ques. 3d. State when, if you know, the line of the Burlington and Missouri River railroad was definitely located through Mills county, and what you know about it.

Ans. I have no actual personal knowledge whatever in reference to that matter, excepting, it might be, this: Some time in the
244 summer or fall of 1856 there was a survey or surveys made, as I understood it, by the B. and M. R. R. R. Co., extending through Mills county to the Missouri river, at a point nearly opposite Plattsmouth, in Nebraska. It was a matter of doubt, however, whether this was to be the final location or not; this doubt existed in the minds of the people and of my own in consequence of statements made and acts done by persons who were understood to be and were agents and employees of that company, and continued until, as I have always recollected it, about the first week in the month of April, 1857, when it was announced here that the company at a meeting which had then just adjourned, had finally adopted it, the line and survey I have above referred to, as their final location.

Ques. 4th. State when the announcement of the final location of the road was made here, and by whom.

Ans. The first I heard of it was on or about the 6th or 7th day of April, 1857, and from David Remmick, who was at the time, as I understood it, in some capacity agent or employee of the company.

245 Ques. 5. State your means of knowledge, and how you come to recollect those matters so distinctly.

Ans. I had, prior to this time, been connected with this company as an agent to take subscriptions and collect money for the purpose of surveying their line of road through the tiers of counties in which I lived. I had been induced through representations made to me in my official intercourse with the board of directors, to believe that the road would finally be located through this tier of counties; acting upon this information and belief, I had made some small investments upon the line and at its expected termination, and for this reason had a very lively interest, and have the matter of dates very distinctly in my mind.

Ques. 6th. Where were you in February, 1857?

Ans. I was absent from home from about Christmas in 1856, until in March, 1857, at Iowa city, the then capital of this State, in attendance upon the constitutional convention, of which I was a member. 246

Ques. 7th. Did you understand from the officers or agents of the company that the line was located prior to the 1st of April, 1857?

Ans. For about the six months directly prior to that time, I did not understand that the survey was a final location. I understood from some of the persons supposed to be connected with the company, that is, persons that I had done business with as such, that it had not been yet made final, and that it yet might yet go elsewhere.

Ques. 8th. Did you ever understand from any person that the line was definitely fixed prior to the 1st of April, 1857?

Ans. No, I did not. I had always understood prior to about the time this survey was made, from all the officers of the company with whom I had done business, that their road was to run through this tier of counties about where it was finally located, and was directed to so represent it to the people. I heard of no doubts until after the survey was made.

Ques. 9th. Was it understood through this county that this line was not definitely fixed prior to the spring of 1857?

247 Ans. That was the understanding of the people for about the six months next prior to that time, so far as I could know it.

Ques. 10. State if you can some of the reasons for such understanding?

Ans. It was reported, understood, and very generally believed by the people, that the company had made and was still making other surveys for their line, one through Fremont county to Nebraska city, the other, above this to Belleview, and as some had it to Council Bluffs. I understood that they also had through their agents, during about that time, solicited subscriptions or donations of property from each of these points, to be given as inducements held out to each locality for the road, as well as from points on this line, Glenwood and Plattsmouth; of this I have no personal knowledge, being away as I said before; this was the general understanding of the people, as I was told during my absence by letter, and by the people when I returned.

D. H. SOLOMON.

The further taking of depositions in this cause is adjourned till tomorrow morning at 8 o'clock a. m.

248 H. A. COPELAND, *Clerk.*

FRIDAY MORNING, *February 17th*, 1865.

Pursuant to adjournment, I proceeded to the further taking of depositions in this cause.

H. A. COPELAND, *Clerk.*

249 William Street, of lawful age, being produced, sworn, and examined, deposes as follows :

Ques. 1st. What is your name, age, and place of residence, and how long have you resided there?

Ans. My name is William Street; age 38. I have resided in Mills county, Iowa, since 1853.

Ques. 2d. Did, or did you not, see and talk with any of the agents or directors of the B. & M. R. R. R. Co., in the summer or fall of 1856, in reference to the construction and location of said road, and if so, give all the particulars.

Ans. I did with agents and directors at various times during the fall and winter of 1856. In conversation with Newman, and Hibbard, and Wm. Thompson, they advanced the idea that the citizens of Mills county would have to subscribe liberally to secure the road through Mills county without a doubt, from the fact that Nebraska City and Belleview and other points were making vigorous efforts to

250 secure the road.

Ques. 3d. State whether or not you talked with any of the directors in the year 1857 in reference to the location of the line of said road, and if so, give all the particulars.

Ans. In the summer of 1857, Mr. Hibbard stated positively at various times that the line of said road was not then permanently located, and held out to the citizens of Pacific City that they would have to donate liberally in order to secure the road at their place, or else it would run down Keg Creek valley, thence direct to Plattsmouth, leaving Pacific City three miles to the north.

WM. STREET.

251 H. C. Watkins, of lawful age produced, sworn, and examined, deposeth and says :

Ques. 1st. What is your name, age, and place of residence?

Ans. My name is H. C. Watkins; my age is 33 years; and I reside in Mills county, Iowa.

Ques. 2nd. How long have you resided in Mills county, Iowa, and what official position have you held in said county?

Ans. I have resided in Mills county since the spring of 1856. I have been clerk of the District Court of said county.

Ques. 3d. State what you know of the location of the line of Burlington and Missouri River railroad through said county.

Ans. It was surveyed, perhaps, in the fall of 1856, but was not considered located till the spring of 1857, about the 1st of April; such was the general understanding, and it was so held by the agents and members of the railroad company, and they solicited from different localities donations and subscriptions as an inducement to secure the location by such different localities; they continued this till the spring of 1847, and I am not certain but longer.

H. C. WATKINS.

252 *Bond.—Exhibit (A.)*

I, O. N. Tyson, county judge of Mills county, Iowa, for the sum of five dollars, and for the further consideration of inducing the Burlington and Missouri River railroad to locate permanently their road through the said county Mills, as near as possible to the county seat of said county, I, as county judge aforesaid, for and in behalf of said county, hereby sell and donate to said company the following real estate owned by said county, to wit: out-lot eighteen, (18) three in block 70, two (2) in block 68, block 59, block 25, in the town of Glenwood, according to the recorded plat of said town; said sale and donation is upon the condition that said road is located through said county as aforesaid, and a deed to be made for said land and lots upon the location of said road, if demanded, within six months from date.

Given under my hand and seal of said county, at Glenwood, this 17th day of October, A. D. 1856.

[L. S.] O. N. TYSON,
County Judge of Mills County, Iowa.

Recorded in Book "D," p. 312.

253 STATE OF IOWA, *Mills County, ss:*

I, H. A. Copeland, clerk of the District Court in and for said county, do hereby certify that in pursuance with the foregoing and attached notice, I did take the foregoing deposition of Nelson Lathrop, Joel Solomon, D. H. Solomon, William Street, and H. C. Watkins, at my office, in Glenwood, in said county, on the 15th, 16th, and 17th days of February, A. D. 1865, as therein set forth; that after the same had been reduced to writing by me and carefully read over by me to the deponents therein, the same were subscribed and sworn to by the said deponents respectively before me, the depositions of the said Lathrop and Joel Solomon on the 15th, and that of D. H. Solomon on the 16th, and that of Wm. Street and H. C. Watkins on the 17th of February, 1865, and that the papers hereto attached and marked exhibit (A) is the identical paper handed to witness Joel Solomon, and refered to in his deposition.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, this 17th day of February, A. D. 1865.

[L. S.] H. A. COPELAND, *Clerk.*

[Rev. stamp.]

District Court, Fremont county, Iowa.

254 FREMONT COUNTY
vs.
THE BURLINGTON AND MISSOURI River Railroad Company. } Chancery.

The defendant in the above-entitled cause will take notice that on the first day of May, 1865, between the hours of 8 o'clock a. m. and 8 o'clock p. m., at the office of the clerk of the District Court of Fremont county, Iowa, in Sidney, in said Fremont county, and before competent authority, I will proceed to take the depositions of Granville Mann, Arc'h Mann, James Flamery, William Holloway, Wm. M. Holloway, James Holloway, J. N. Johnson, Samuel Chambers, George Forney, John Wilson, John Hendrickson, James Hendrickson, W. M. Woodrum, Robert Percival, J. L. Mitchell, Fred. Rector, J. A. Harvey, J. D. Blanchard, and others, to be used in evidence on behalf of the plaintiff on the trial of said cause; and if the said depositions are not completed on said day, the taking thereof will be continued from day to day at the place and between
255 the hours aforesaid, till all are taken, or so many thereof as I shall desire to take.

J. A. HARVEY,
Att'y for Plaintiffs.

STATE OF IOWA, *Des Moines County:*

I received this notice March 24th, 1865, and on March 25th, 1865, I served this notice on C. E. Perkins, the acting superintendent of B. & M. R. R. R. Co., by reading the same to him in the city of Burlington, Des Moines Co., Iowa, and I also delivered to him a true copy thereof.

Service	50
Copy	25
2 m'l'ge	20
	95

Paid by plaintiff's attorney.

Endorsed: Dist. Court, Fremont Co. Fremont County *vs.* B. and M. R. R. R. Co. Notice to take depositions at Sidney, May 1, 1865. J. A. Harvey for pl'ff.

In District Court of Fremont co., Iowa.

256 FREMONT COUNTY
vs.
BURLINGTON & MISSOURI RIVER R. R. Co.
} Chancery.

Depositions of witnesses taken before me, J. L. Mitchell, clerk of the District Court of said county, at my office, in pursuance of the notice hereunto attached, commencing on Monday, May 1st, 1865, between 8 o'clock a m. and 8 o'clock p m., and continued from day to day between said hours, until the 6th day of said month, to be used in evidence on behalf of the plaintiff on the [the] trial of the above-entitled cause, to wit:

Now on this said first day of May, 1865, Granville Mann, being produced and sworn and examined, answers and testifies as follows:

Ques. 1st. State your name, age, and place of residence.

Ans. My name is Granville Mann. I am thirty-eight years of age, and reside in section twelve, town. 69, range 43, in Fremont county, Iowa.

257 Ques. 2d. How long have you lived there?

Ans. I have lived there ten years. Have lived in the county since April, 1851.

Ques. 3d. State what particular tracts of the land in controversy you are acquainted with, and know of your own personal knowledge to be swamp and overflowed.

Ans. I am acquainted with all in section No. 31, sec. 29, the S. ½ 33; all of sec. 19, and all of section 17 in town. 70, r. 43, and all in sec. 5 in town. 69, r. 43, and the NW ¼ and S ½ of SE and S ½ of SW ¼, and the W ½ of NE ¼ of sec. 27, 70, 43.

Ques. 4. State how long you have been acquainted with this land.

Ans. Ever since the summer of 1851.

Ques. 5. State what the character of these lands was in 1851.

Ans. It was all overflowed in 1851, except perhaps a few sand hills from six inches to several feet in depth during May and June. On that in sec. 5, 69, 43, and sec. 31, 70, 43, I caught over three hundred pounds of fish in one day during that summer.

258 Ques. 6. State what caused the overflow of that land at that time.

Ans. The overflow was from the Missouri river and Kegg creek.

Ques. 7. State how far this land is from the Missouri river.

Ans. From one quarter to three miles.

Ques. 8. Is all this land subject to overflow from the Missouri?

Ans. It is, unless the dike or levee built by the county keeps it off of a part of it.

Ques. 9. What is the character of this land aside from being subject to overflow?

Ans. It is wet and swampy, and at some seasons of the year it is impassable.

Ques. 10th. From your knowledge of this land, was that the character of the greater portion of each forty of the land refered to by you?

Ans. It was, until the ditches made by the county had drained a portion of it.

259 Ques. 11th. To what extent was the land overflowed in the spring and summer of 1858?

Ans. It was nearly all covered with water from April till some time in June, and remained swampy and almost impassable till September.

GRANVILLE MANN.

Ques. 12th. To what extent was it overflowed in 1862?

Ans. It was all covered with water, except a few sand ridges and sand hills, from about the first of April till June, and perhaps later.

Ques. 13th. Before this land was ditched or reclaimed by the county, was it fit for cultivation? And if not, state the reason.

Ans. It was not fit for cultivation, except perhaps a few small patches. It was rendered unfit by its swampy and overflowed character.

Ques. 14th. State what is your occupation.

Ans. I am a farmer.

Ques. 15th. State whether that land is timber or prarie.

Ans. Part timber and part prarie.

260 Ques. 16th. Have you been acquainted with this land every year since 1850?

Ans. I have. I have seen it every year, and been over it frequently.

GRANVILLE MANN.

Subscribed and sworn to by Granville Mann before me this 1st day of May, 1865.

J. L. MITCHELL, *Clerk.*

James Flamery being produced, sworn, and examined, answers and testified as follows, to wit:

Ques. 1st. State your name, age, and place of residence.

Ans. My name is James Flamery. I am thirty-four years old, and live on section No. 2, town. 69, r. 43 W., in Fremont county, Iowa.

Ques. 2nd. How long have you been living there?

Ans. Since March, 1851.

Ques. 3d. State what particular tracts of lands in controversy you are acquainted with, and which you know of your own personal knowledge to be swamp and overflowed lands.

Ans. The E. ½ sec. 5 and E. ½ SW. ¼, and SE. SW. ¼ of sec. 5,
in town. 69, r. 43; and the S. ½ NE. and S. ½ NW. and S. ½
261 of section 15, and the NW. ¼ and SE. ¼, and SW. NE. and
E. ½ SW. ¼ and NW. SW. sec. 17; all that in section 19,
and E. ½ NE. and NW. ¼, and SE. ¼ sec. 21, and N. ½ and S ½, SE.
and S. ½ SW. of sec. 27, and E. ½ and W. ½ NW., and W. ½ SW.

of sec. 29, and S. ½ and E. ½ NE. and NE. NW. ¼ sec. 31, and W. ½ and SE ¼ and W. ½ and NE. sec. 33, township 70, range 43.

Ques. 4th. State how long you have been acquainted with this land.

Ans. Since the spring of 1851.

Ques. 5th. State where these lands are situated, and what is their character.

Ans. They are all on the Missouri river bottom, and are subject to periodical overflows. I have been acquainted with them for near fifteen years, and I think they have been overflowed at least ten out of the fifteen years.

Ques. 6th. State what causes the overflow of these lands.

Ans. They are subject to overflow from the Missouri river, from Kegg creek, and also from Wabawsa (Wabausa) creek, and sometimes all combine, at which times we have splendid fishing grounds on these lands.

Ques. 7th. How long do these overflows last?

262 Ans. Before these lands were drained by the county, they would last from early spring all summer over most of these lands.

Ques. 8th. What is the character of these lands when not overflowed?

Ans. The larger portion of them are unfit for cultivation. They are all low, wet, and swampy when not overflowed.

Ques. 9th. From your knowledge of these lands, do you believe the greater part of each forty-acre tract of the same is and was, on the 28th Sept., 1850, unfit for cultivation by reason of its swampy and overflowed character?

Ans. I do.

Ques. 10th. State what your occupation is.

Ans. I am a farmer.

JAMES FLAMERY.

Subscribed and sworn to before me by James Flamery this 1st day of May, A. D. 1865.

J. L. MITCHELL, *Clerk*.

263 William M. Holloway being produced, sworn, and examined, answers and testifies as follows:

Ques. 1st. State your name, age, and place of residence.

Ans. My name is William M. Holloway. I am thirty-two years old, and live on section No. 22, town. 70, in r. 43, in Fremont county, Iowa.

Ques. 2nd. How long have you lived there?

Ans. I have been living there ten years, and in the neighborhood fifteen years.

Ques. 3d. State what particular tracts of land in controversy in this suit you are acquainted with, which you know of your own personal knowledge to be swamp and overflowed.

Ans. The W. ½ of sec. 3, and all that described in plaintiff's petion in sections No. 5 and 9, and W. ½ sec. 11, and S. ½ NE. ¼ and S. ½ NW. ¼, and S. ½ of section No. 15; all that described in plaintiff's petition in sections No. 17, 19, 21, 27, and 29, 31 and 33, town. No. 70, range 43 west.

Ques. 4th. State how long you have been acquainted with these lands.

264 Ans. I have been acquainted with them fifteen years.

Ques. 5th. State what is the character of this land.

Ans. It is all subject to overflow and swampy, except perhaps the NE. ¼ of the NE. ¼ of section No. 27, 70, 43.

Ques. 6th. What occasions the overflow of this land, and how often does it overflow?

Ans. It is subject to overflow from the Missouri river, from Wabausa (Wabausa) and from Kegg creek. The overflows average about twice a year.

Ques. 7th. How long does the water remain on these lands when overflowed?

Ans. Sometimes it remains but a short time, and sometimes for months.

Ques. 8th. At what times of the season do these overflows come?

Ans. Usually in April and June, the first from the creeks, and the the second from the river.

Ques. 9th. How deep does the water get on these lands at such times?

265 Ans. From six inches to seven feet, and in some places ten feet. In 1862 I went from where I live across the bottom over some of this land in a skiff to Rock Bluff, a distance of ten miles.

Ques. 10th. Aside from being subject to overflows what is the character of these several tracts of land?

Ans. The larger portion of them are very low and swampy and unfit for cultivation without artificial draining.

Ques. 11th. State whether or no the greater portion of each forty acre tract of said land is of that character.

Ans. It is.

Ques. 12th. State how long you have been well acquainted with the land.

Ans. Ever since the year 1850; have seen it and have been over it every year since that time frequently.

Ques. 13th. What is your occupation?

Ans. I am a farmer.

Ques. 14. When was this land surveyed by government?

Ans. In 1850 into townships, and in 1851 it was sectionized. I carried the chain for the surveyors; when correcting the survey they frequently had to go in a canoe or skiff.

266 Ques. 14. From your personal knowledge of this land do you believe that it was of the character above described in 1850?

Ans. I do; I know it was; I saw it in May, 1850; it was even worse then than now; I have, about that time, run over nearly every foot of it in skiffs.

W. M. HOLLOWAY.

Subscribed and sworn to before me by W. M. Holloway this 1st day of May, 1865.

J. L. MITCHELL, *Clerk.*

267 James M. Holloway, being produced, sworn and examined, answers and deposes as follows :

Ques. 1st. State your name, age, and place of residence.

Ans. My name is James M. Holloway; I am twenty-nine years old; and live in section No. 29, town. 70, r. 43 west, in Fremont county, Iowa.

Ques. 2nd. How long have you lived there?

Anr. Ever since the 14th day of May, 1850, except two years I lived in the bluffs and on the uplands, during which time I was back and forth from there to where I lived nearly every month.

Ques 3d. Examine the descriptions of the lands in controversy in this suit, as described in plaintiff's petition, and state what tracts of the same you are acquainted with. (The petition is here handed to the witness.)

Ans. I am acquainted with all the land described in this petition in t. 70 n., in r. 43 w., but cannot perhaps trace all the lines of tracts in sections 35, 9 and 11.

Ques. 4th. How long have you been acquainted with this land?

268 Ans. In May, 1850, I became acquainted with it and have been ever since. I have been over it frequently and seen it often every year.

Ques. 5th. State what was the character of this land in September, 1850, and what has it been since.

Ans. It was swamp and overflowed land nearly all of it; and still continues the same, except where it has been drained by the county.

Ques. 6th. State what causes the overflow of this land.

Ans. The overflows come from Wabusa Plum creek and Kegg creek and the Missouri river.

Ques. 7th. State how often and at what depth this lands is overflown.

Ans. Twice a year on an average, from six inches to eight feet deep; I have frequently seen logs rafted over it, and have caught fish on it that would weigh twenty pounds and more.

Ques. 8. How long do these overflows last?

Ans. From one to four months, commencing about the first
269 of April. Before the county cut the ditches they usually lasted
four or five months; since that it drains off quicker.

Ques. 9th. Aside from the overflows what is the character of this land?

Ans. It is part timber and part prairie; all low boggy land except E ½ SE ¼ of sec. 29.

Ques. 10th. From your own personal knowledge of this land is the greater portion of each forty acres fit or unfit for cultivation without artificial draining?

Ans. It is unfit except, perhaps, the E ½ SE ¼ 29, and was in 1850.

Ques. 11. State whether you are acquainted with the lines bounding these several tracts of land in said township described in this petition, and state how you became so well acquainted with them and this land.

Ans. I am acquainted with most of said lines; I carried the chain for the United States surveyor when he was inspecting and resurveying the said lands; and I have passed over the land more or less every month for the last fifteen years.

Ques. 12th. What is your occupation?

Ans. I am a farmer.

JAMES M. HOLLOWAY.

Subscribed and sworn to before me by James M. Holloway this 1st day of May, 1865.

J. L. MITCHELL, *Clerk.*

270 John N. Johnson, being produced, sworn and examined, answers and testifies as follows:

Ques. 1st. State your name, age, and place of residence.

Ans. My name is John N. Johnson; I am fifty-one years of age; and reside in Fremont county, Iowa.

Ques. 2nd. How long have you lived in this county?

Ans. Since some time in 1852; in the spring of that year I rented a place about seven miles above where I now live and I was compelled to leave by reason of overflow and high water, and I moved down near where I now live. In 1853 I moved on the E ½ of NE¼ of sec. 32, t. 70, r. 43, and still live there.

Ques. 3d. What land did you purchase of Fremont county as swamp land?

Ans. The E ½ of NE ¼ of sec. 32 and the NW ¼ of sec. 23, t. 70, r. 43, as shown by deed, a copy of which is attached to this deposition marked "A."

Ques. 4th. Are you acquainted with the land in township No. 70, N. of r. No. 43, which is in controversy between Fremont county and the Burlington and Missouri River R. R. Co.

Ans. I am acquainted with all the land in that township.

Ques. 5th. What is the general character of the land?

271 Ans. 5th. It lies on the Missouri river bottom, and generally it is overflowed and swampy land; some of it timber and some of it wet prairie.

Ques. 6th. Is that land fit for cultivation? If not, state the reason.

Ans. It is not without ditching and draining, because it is wet, marshy and swampy, and subject to overflow from the Missouri river. I have seen it overflowed several times. I have seen the water from one to eight feet deep on the greater part of that land. And before it was ditched and drained by the county, I have known the water to remain on from the time the snow went off in the spring till September. I have seen persons riding round in skiffs and fishing on a large portion of said land.

J. N. JOHNSON.

Subscribed and sworn to before me by J. N. Johnson, this 1st day of May, 1865.

J. L. MITCHELL.

272 *Exhibit "A."—Warranty deed.*

Know all men by these presents, that I, E. S. Hedges, county judge in and for the county of Fremont and State of Iowa, and in the name and for said county, for and in behalf of the county and State aforesaid, "for the consideration of the sum of three hundred dollars paid into the treasury of said county, by John N. Johnson, the receipt of which is hereby acknowledged, do hereby grant, bargain and sell to said John N. Johnson, the following described tracts of land, situated in the county of Fremont and State of Iowa; the same being swamp land, and belonging to said county of Fremont, to wit: The northwest quarter of section thirty-three, (33,) and the east half of the northeast quarter in section thirty-two, (32,) in townships seventy (70) north of range forty-three (43) west, containing two hundred and forty acres, more or less. And I, E. S. Hedges, county judge of said county, for and in behalf of said county, do hereby covenant with the said John N. Johnson, to warrant the title against the lawful claims of all persons whomsoever."

Given under my hand and seal of office at Sidney, this 14th day December, A. D. 1858.

[L. S.] E. S. HEDGES, *County Judge.*

273 STATE OF IOWA, *Fremont County, ss:*

Before me, the undersigned, A. Leitch, clerk of the District Court in and for said county, appeared E. S. Hedges, county judge of Fremont county, who is personally known to me to be the identical person whose name is affixed to the foregoing deed as grantor and acknowledged the same to be his voluntary act and deed.

Given under my hand and official seal, this 14th day of December, A. D. 1858.

[L. S.] A. LEITCH,
Clerk of the Dist. Court.

Recorded in book C. p. 326.

STATE OF IOWA, *County of Fremont, ss:*

I, M. A. Webster, recorder of deeds in and for said county, certify that the foregoing is a full, true and correct copy of the deed of conveyance executed by Fremont county to John N. Johnson, for the land therein described, as the same is recorded and remains of record in my office.

Given under my hand this 1st day of May, 1865.

M. A. WEBSTER, *Recorder.*

274 W. M. Woodrum, being produced, sworn and examined, testifies as follows:

Ques. 1st. State your name, age, and place of residence.

Ans. My name is W. M. Woodrum; I am twenty-nine years old, and live in Fremont county, Iowa.

Ques. 2nd. State whether you are acquainted with NE. ¼ and the E. ½ of the NW. ¼ of section No. 3, town. 69, range 43 and section No. five in same township.

Ans. I am.

Ques. 3d. State how long you have been acquainted with it and what is the character of it.

Ans. I have been acquainted with it for ten years. It is subject to overflow, low, marshy, wet, and particularly that in section (3) three, which was very wet and swampy, being at the mouth of Plum creek, where it spread out over the prarie, but since the ditch was cut by the county, it is not so much so, but it is all subject to overflow. That in section five, I have seen covered with water from three to five feet deep. It is all unfit for cultivation without artificial draining or diking.

W. M. WOODRUM.

275 Subscribed and sworn to before me by W. M. Woodrum, this 1st day of May, 1865.

J. L. MITCHELL, *Clerk.*

The further taking of depositions is adjourned until to-morrow morning, May 2nd, at 10 o'clock

J. L. MITCHELL, *Clerk.*

276 MAY *2nd*, 1865, 10 *o'clock a. m.*

The taking of depositions resumed according to adjournment.

Fred Rector being produced, sworn and examined, answers and swears as follows:

Ques. 1st. State your name, age, and place of residence.

Ans. My name is Fred Rector; I am forty-three years of age, and I reside in Fremont county, Iowa.

Ques. 2nd. How long have you lived in this county, and what official positions have you held in this county?

Ans. I have lived here ever since 1849. I have held the office of county judge for two terms. I have filled the office of justice of the peace, and others, and am now chairman of the board of supervisors.

Ques. 3d. Examine the descriptions of the lands in township 70, range 43 west as attached to the plaintiff's petition, and state what, if any of it, you know to be swamp and overflowed land, and give its character.

Ans. I am acquainted with all that land, and have been for sixteen years. All of the land described in this petition lying north
277 of the south tier of sections in the townships except perhaps
the E. ½ SE. ¼ of sec. 29 is swamp and overflowed land. It is nearly or quite all subject to overflow from the Missouri river and from Kegg creek and Plum creek and Wabousa creek, and other little streams running down out of the bluffs. Sometimes the Missouri covers nearly the entire bottom over said township, at which times it presents the appearance of a lake or sea of water for miles all over the land. Aside from the overflows, this land is swampy and marshy, and particularly in the spring, when the ground seems so filled with water that when the sod is broken teams and stock mire down, making it impossible to plow and cultivate it for a considerable part of the season. It is not so much so since the county has ditched the land. Some of it has been made much drier by reason of these ditches.

Ques. 4th. State whether you are acquainted with the manner of surveying and marking the public lands, and with the lines bounding the several tracts in said township refered to by you.

Ans. I am.

278 Ques. 5th. State how you became so well acquainted with these lands.

Ans. I lived a good part of the time in the immediate neighborhood of these lands. I was county judge at the time they were selected as swamp lands, and have had occasion frequently to pass over and see them and to transact business in reference to them; and from all these reasons, I became well acquainted with all these lands.

Ques. 6th. State whether the greater part of each forty-acre tract of said land was of the character above described on the 28th day of September, 1850, and unfit for cultivation.

Ans. It was, and unfit for cultivation without artificial draining or embankment.

Ques. 7th. State if you can how much money the county has expended in draining these swamp lands.

Ans. I cannot state the amount, but I should think, altogether, over $50,000.

Ques. 8th. What part of the lands in controversy lie on the Missouri river bottom?

Ans. All that in townships Nos. 69 and 70, range 43 west.

279 Ques. 9th. State whether any of this land in controversy in this suit has been bargained or sold by the county; and if so, what was done with the proceeds.

Ans. Nearly all of it has been sold by the county, and the proceeds have been principally applied to the draining and reclaiming the same.

Ques. 10th. State as near as you can what amount of money has been expended by the county in township No. 70, range 43 W. in draining.

Ans. I can't specify the amount, but there has been as much more money expended there for that purpose than has been realized from the sale of the swamp lands in that township.

FRED RECTOR.

Subscribed and sworn to before me by Fred Rector, this 2nd day of May, 1865.

J. L. MITCHELL, *Clerk.*

280 John Hendrickson, of lawful age, being produced, sworn, and examined, deposes and answers as follows:

Ques. 1st. State your name, age, and place of residence.

Ans. My name is John Hendrickson; I am fifty-six years old, and live on section 4, town. 70, range 43 west, in Fremont county, Iowa.

Ques. 2nd. How long have you lived there?

Ans. Eighteen years.

Ques. 3d. Are you acquainted with the land in township No. 70, r. 43 W., which is in controversy in this suit? If so, state how long you have know it, and what is its character.

Ans. I am acquainted with it; I have known it for the last eighteen years. It is all, or nearly all, subject to overflow from Missouri river, Kegg creek, and Wabausee creek; when not overflown, it is wet, swampy, and marshy; and if the season is anything like wet, it is wholly unfit for cultivation.

Ques. 4th. How long do the overflows continue?

Ans. From April to August.

his
JOHN + HENDRICKSON.
mark.

Attest: J. A. HARVEY.

281 Subscribed and sworn to before me by John Hendrickson, this May 2d, 1865.

J. L. MITCHELL, *Clerk.*

282 George Forney, being produced, sworn, and examined, answers and testifies as follows:

Ques. 1st. State your name, age, and place of residence.

Ans. My name is George Forney; I am forty-four years old, and live on sec. No. 13, town. No. 70, r. No. 43, in Fremont county.

Ques. 2nd. How long have you lived in that township?

Ans. Ever since 1846.

Ques. 3d. Are you acquainted with the land in township No. 70, r. 43 W., which is in controversy in this suit? If so, state how long you have been acquainted with it.

Ans. I am acquainted with the land, but could not trace the lines of the different tracts. I have known it for eighteen years.

Ques. 4th. What is the character of the land?

Ans. It is nearly all subject to overflow from the Missouri river, Kegg creek, Plum creek, and Wabausee creek. When not overflowed, it is low, wet, and marshy.

Ques. 5th. How long do these overflows last?

Ans. They generally come about April, and sometimes remain till August.

GEORGE FORNEY.

283 Subscribed and sworn to by George Forney, before me, this May 2nd, 1865.

J. L. MITCHELL, *Clerk.*

284 I. D. Blanchard, being produced, sworn, and examined, answers and testifies as follows:

Quest. 1st. State your name, age, and place of residence.

Ans. My name is I. D. Blanchard; I am fifty-six years old, and live in Fremont county, Iowa, on sec. 36, town. 68, r. 44.

Ques. 2nd. How long have you resided in this county?

Ans. Since April, 1848, on the same place.

Ques. 3d. State how long you have been acquainted with the land in this county, in the Missouri river bottom.

Ans. Over seventeen years.

Ques. 4th. State what is the general character of that land, and whether it has changed any since 1850; and if so, state the cause.

Ans. It is swamp and overflowed, and has changed only as it has been drained and diked.

Ques. 5th. Examine the list of lands attached to plaintiff's petition carefully, and state whether you are acquainted with each one 285 of the several tracts situated on the Missouri river bottom, and how long you have been acquainted with it.

Ans. I became acquainted with each tract in the spring of 1850, during the first overflow that I had seen, and have known them ever ever since.

Ques. 6th. What was the character of that land in 1850, and what it is now.

Ans. In the spring of 1851 I saw large portions of each tract covered with water from overflow, and in five different years since they have overflowed, the last being in 1862.

Ques. 7. What part of the land in controversy lies in the Missouri river bottom?

Ans. All that in townships number 69 and 70, of range 43 west.

Ques. 8. State whether any of this land in controversy in this suit has been bargained or sold by the county; and if so, how much, and what was done with the proceeds.

Ans. Nearly all of it has been sold by the county, and the proceeds have been partly applied to the draining and reclaiming of the same.

286 Ques. 9. How long do the overflows of these lands continue?

Ans. From one to five months.

Ques. 10. What is the character of these lands aside from the overflows?

Ans. Flat and alluvial, so level that long rains make them too soft for a horse to travel on cultivated lands, interspersed with sloughs and quagmires.

Ques. 11. State whether these lands are fit or unfit for cultivation, without artificial draining, &c.

Ans. They must be either diked or drained, or both to secure them for cultivation in the year of overflow.

I. D. BLANCHARD.

Subscribed and sworn to before me by I. D. Blanchard, this 2d day of May, 1865.

J. L. MITCHELL, *Clerk.*

287 Samuel Chambers being produced, sworn, and examined, answers and testifies as follows:

Ques. 1st. State your name, age, and place of residence.

Ans. My name is Samuel Chambers; I am fifty-six years old, and live in section No. 17, town. 70, range 43 west, in Fremont county, Iowa.

Ques. 2nd. How long have you lived there?

Ans. Ever since the year 1850.

Ques. 3d. Are you acquainted with the land in controversy in this suit lying in township 70, r. 43 west? If so, how long have you known it?

Ans. I am acquainted with it; I have known it since 1850.

Que. 4th. What is the character of the land in section No. 3, town. 70, r. 43?

Ans. It is all overflowed and swampy.

Ques. 5th. What is the character of section No. 5 in said township?

Ans. It lies on the Missouri river, and is subject to overflow by the river.

288 Ques. 6th. What is the character of the land in section 9 in said township?

Ans. The greater part of each forty-acre tract in that secton, except the NE¼ of NW¼, and NW¼ of NE¼ is swampy and overflowed land; the south half of the section is swampy, and also subject to overflow, and is frequently overflown from the river.

Ques. 7th. What is the character of the W½ of section 11 in said township?

Ans. It is swampy and overflown land. It is low and frequently covered with water.

Ques. 8th. What is the character of sec. No. 15 in said township?

Ans. A considerable part of it is marshy and lies in Wabausa lake, but I cannot say just how much, and I think the most of each forty-acre tract is subject to overflow.

Ques. 9th. What is the character of section 17, in said township?

Ans. It is interspersed with broad marshes and narrow ridges of land of three or four feet high and all subject to overflows and freqently overflows.

289 Ques. 10th. Give the character of section 19 in said town.

Ans. It is about the same as section 17, except the ridges are higher and narrower, mere backbones of land, and the marshes are deeper.

Ques. 11th. Give the character of E½ of NE¼, and the NW½ and SE¼ of section 21 in said township.

Ans. The NE¼ of that section lies in Lake Wabausa, and the water has not been off any considerable part of it since 1850 but twice. The NW¼ and SE¼ is all marshy and frequently overflowed and covered with water, except about five acres in SE¼ which does not overflow.

Ques. 12th. Give the character of section 29 in said township.

Ans. It is all subject to overflow and is frequently overflown from the Missouri river to a depth of from one to five feet. I have seen saw-logs float over it, and seen boats and skipps floating over it.

Ques. 13th. Give the character of section 31 in said township.

Ans. It is all swamp and overflowed land lying on the river.

290 Ques. 14th. Are you acquainted with the lines of the several tracts particularly refered to in the interrogations?

Ans. I am acquainted with the lines of the several tracts and corners bounding most of them.

Ques. 15th. Was this land of the character above described in 1850?

Ans. It was.

Ques. 16. Is the greater part of each forty-acre tract rendered unfit for cultivation by reason of its swampy and overflowed character?

Ans. It is.

Ques. 17. How often and in what year since you have lived there has there been general overflow of all these lands?

Ans. In 1851, 1853, 1855, 1857, and twice in 1862 these overlows were from one to five feet deep over the land out of the sloughs, and in them much deeper. In 1851 it lasted from middle of May till fall, in some places all winter. In 1853, about three weeks in June; in 1855, three or four weeks in April; in 1862, in April, two weeks, and in June and July about six weeks; besides these there has been various other smaller overflows during the different seasons.

SAMUEL CHAMBERS.

291 Subscribed and sworn to by Samuel Chambers, before me this 2nd day of May, 1865.

J. L. MITCHELL, *Clerk.*.

292 Wm. J. Holloway, being produced, sworn and examined, deposes and answers as follows:

Ques. 1st. State your name, age, and place of residence.

Ans. My name is William J. Holloway. I am forty-four years old, and live on section eleven, in town. 70, range 43 west, in Fremont county, Iowa.

Ques. 2nd. How long have you lived there, and what is your occupation?

Ans. I have lived there twelve years; by occupation a farmer.

Ques. 3d. Are you acquainted with the land in controversy on the Missouri bottom, as described in the plaintiff's petition in this cause?

Ans. I am, and have been since 1851. I have been living on and amidst this land since 1852, but I cannot trace the lines of all the tracts. Some of the lines and corners I am familiar with.

Ques. 4th. Are you acquainted with the W ½ of NE ¼ and E ½ of NW ¼, sec. 3, town. 69, R. 43? If so, state its character.

293 Ans. I am; it is subject to overflow and is swampy, and is and has been unfit for cultivation ever since I became acquainted with it.

Ques. 5. State what is the character of the E ½ sec. 3, town. 70, R. 43.

Ans. I am; it is subject to overflow and is swampy, and is and has been unfit for cultivation ever since I became acquainted with it.

Ques. 6. What is the character of sec. 5 in said township?

Ans. It lies on the river, is low, and except a few sand ridges is subject to overflow from the river. It is frequently overflown, and some of it is very marshy.

Ques. 7. What is the character of W. ½ sec. 11, town. 70, range 43 west?

Ans. It is frequently overflown by Wabousa creek—several times during the season—and the overflows make it very miry.

Ques. 8. What is the character of sec. 15, town. 70, R. 43?

Ans. The south part of that section is in Wabausa lake, and the rest is wet and marshy, parts of it so during the entire season.
294 There is another lake that covers a part of it. There is a few sand ridges on a part of it that are not wet, but they are narrow and interspersed with sloughs.

Ques. 9. State whether the greater part of each forty acre tract of these lands, particularly described in interrogations 4, 5, 6, 7, and 8, is or was in 1850 and since that time rendered unfit for cultivation by reason of its overflow and swampy character.

Ans. I think it was, and a great deal of the land is yet. The drains cut by the county have helped some of them.

Ques. 10. Were these lands of the character above designated in 1850?

Ans. I think they were, though I did not see them till 1851. That year they were about as bad as ever I saw them. I mired down with a horse and buggy in several places, and had to wade out and draw out the buggy by hand.

WM. J. HOLLOWAY.

Subscribed and sworn to before me by Wm. J. Holloway, this May 2nd, 1865.

J. L. MITCHELL, *Clerk.*

The further taking of depositions is now adjourned until to-morrow morning, May 3, 9 o'clock a. m.

J. L. MITCHELL, *Clerk.*

295 MAY 3*d*, 1865.

The taking of depositions resumed according to adjournment.

Arch. Mann, being produced, sworn and examined, deposes and swears as follows:

Ques. 1st. State your name, age, and place of residence.

Ans. My name is Arch. Mann. I am thirty-six years old, and reside in Fremont county, Iowa.

Ques. How long have you lived in this county?

Ans. Ever since April 20th, 1851.

Ques. Are you acquainted with the land in controversy in this suit as described in plaintiff's petition?

Ans. I am acquainted with all that situated on the Missouri river bottom, which includes all in controversy in townships Nos. 69 and 70, range 43 west, and have been ever since June, 1851. Of the other land described in said petition which lies on West Nishenabottany river and Walnut creek, I am acquainted with a part of it.

Ques. 4. Are you acquainted with manner of surveying and marking the public lands?

296 Ans. 4. I am; can trace the lines, &c. I helped survey and select most of the swamp land in this county lying east of the West Nishenabottany river.

Ques. 5th. Examine the list of lands attached to plaintiff's petition, and designate the particular tracts on the Missouri river bottom, the lines of which you are acquainted with. (Petition handed to witness.)

Ans. All that described in sections 3 and 5, in town. 69, range 43 west, and all in sections 29 and 31, in township 70, range 43 west. I am acquainted with all the ballance of the land in the township, but not so familiar with the lines of each forty-acre tract.

Ques. 6th. State what is the character of the tracts described in sec. 5, town. 69, R. 43, and in secs. 29 and 31, in town. 70, R. 43 west.

Ans. It is all subject to overflow every year, and when not overflown it is so wet and swampy that it is not fit for cultivation during the fore part of the season. There are a few acres in sec. 31, town. 70, R. 43, that I have never seen under water, but not much.
297 More than half of each forty is wet and subject to overflow as above described.

Ques. 7. State what is the character of the balance of the land in controversy, as described in this petition, in T. 70, R. 43 west.

Ans. I think until the county cut those drains and ditches it was nearly all subject to overflow, or was so swampy and very wet so as not to be fit for cultivation. Those ditches have made some of the land much drier. I have seen large portions of the land overflowed and covered with water in the winter and also in the summer season, but some of this same land that used to overflow so as to be utterly unfit for cultivation is by the ditches drained and made tillable.

Ques. 8. State what you know, if anything, about the land in controversy lying in townships 69 and 70, range 40 west, and townships

69 and 70, range 41 west. State on what streams these lands lie, and when and how you came to know anything about them.

Ans. I know something of these lands. All that in townships 69
and 70, range 40 west, and all that in section 11 in township
298 69, R. 41, lies on Walnut creek, a narrow, deep, sluggish, and
very crooked stream, which enters the county at the northeast
corner and runs in a southwest direction, entering the West Nishenabottany river in section 17, T. 69, R. 41 west. That in section 9 in said township lies in the forks or between Walnut creek and said river. That in section 5 and 7, town. 69, range 41 west, and all that in town. 70, range 41, lies on said West Nishenabottany river, which enters the county from the north in section No. (5) five, town. 70, R. 41 west, and runs south through sections No. 5, 8, 17, 20, 29 and 32. I helped survey and select a large part of the swamp lands in this county in the fall of 1853. I helped survey and select all that on Walnut creek, and all on the east side of West Nishenabottany river south of the north line of section 21, and nearly all on the East Nishenabottany river. The greater part of each forty acre selected was either marshy or swampy, or so subject to overflow as to be unfit for cultivation without ditching or diking. Walnut creek I think overflows every spring and sometimes at other seasons, and some
299 of the lands that are not thus overflown are made so wet and
marshy from water running down from the various little
streams and bluffs as to be swampy and frequently impassable, some of it for the entire season and some of it for a part only. The county has been cutting some ditches on these lands, but I am not able to say what effect is produced by it.

Ques. 9. State what was the character of the land in section 5, T 69, R 41, described in plaintiff's petition?

Ans. The NE. $\frac{1}{4}$ is marshy, W. $\frac{1}{2}$ of NW. is subject to overflow from the river, and are marshy. The river runs through the SE. $\frac{1}{4}$, and the greater part of each forty is either overflown or swampy land and some of it both.

Ques. 10. State what you know of the character of the land of E $\frac{1}{2}$ of sec. 21, T. 70, R. 41, west.

Ans. I helped select it as swamp land; it was rendered wet and marshy by reason of a stream of water running down from the bluffs and spread out on the land, having no outlet or way to escape: and the
land being low, it is thus rendered unfit for cultivation without
300 artificial draining or embankment; such was its character when
selected in 1853, and evidently was before and since.

Ques. Give the character of the W. $\frac{1}{2}$ of NW. $\frac{1}{4}$, sec. 27 in town. 70, R. 41 west.

Ans. It is of the same character as that in sec. 21, above described.

Ques. State what you know, if anything, about the lands in controversy in secs. 29 and 35 in said town. 70 and R. 41 ?

Ans. From the drift wood and other marks of overflow on the SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section 29, I am satisfied it is subject to overflow from the Nishenabottany river, which runs through it. The W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ and SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of section 33, is wet and swampy, so as to be unfit for cultivation without artificial means. The balance in these two sections I do not remember.

Ques. Who was the principal agent and surveyor in selecting these swamp lands for the county?

Ans. Benjamin Rector.

Ques. Did you ever study the science of surveying?

Ans. I did.

ARCH. MANN.

301 Ques. State what rule you observed or how you selected the swamp lands.

Ans. When there was any doubt as to the character of the land we traced out the lines and surveyed and measured and examined each forty-acre tract sufficiently to know that the greater part was either swampy and subject to overflow, so as to be unfit for cultivation, which we could easily determine by the character of the grass and vegetation, by the marshy and wet appearance of the ground, and by the drift-wood and other evidences of overflow.

Ques. State the character of the bottom lands along Walnut creek.

Ans. The bottom or low lands on both sides are narrow, and the line between the wet and dry land distinctly marked, differing in this respect from the larger streams; on this stream it is very easy to distinguish the swampy overflowed lands; there is not much chance for mistake, as they both at wet and dry seasons present the character of low, marshy, overflowed lands.

302 Ques. From your knowledge of the lands on Walnut creek (particularly those in controversy) and your examination at the time of selection, what do you consider the character of the greater part of each forty-acre tract in 1850 and at the time of selection?

Ans. I became acquainted with some of these lands in 1851, and I am satisfied that the greater portion of each forty-acre tract was either so swampy and marshy or overflowed as to be unfit for cultivation.

ARCH. MANN.

Subscribed and sworn to, by Arch. Mann, before me this 3d day of May, 1865.

J. L. MITCHELL, *Clerk.*

303 Milton Young being produced, sworn, and examined, deposes as follows:

Ques. State your name, age, and place of residence.

Ans. Milton Young is my name. I am thirty-one years of age, and live in Fremont county, Iowa.

Ques. How long have you lived in this county?

Ans. Nine years.

Ques. 3d. Are you acquainted with the NE. ¼ of sec. and the E. ½ of SW. ¼ and W. ½ of SE. ¼ of sec. 23 T. 70, R. 40? If so, state its character.

Ans. I am, and I have been for nine years; Walnut creek runs through it in a meandering course and renders it subject to overflow; most of each forty is swamp and overflowed land, and unfit for cultivation.

Ques. 4. Give the character of the SE. ¼ and the SE. ¼ of the NE. ¼ and SE. ¼ of NW. ¼ of sec. 27 in said township, if you know.

Ans. Said creek runs rigbt through it, and it is of the same char-
acter as that described in section 23; is so flat, low and wet
304 that the rains necessary to a good agricultural or cropping sea-
son on ordinary land renders it so wet and marshy as to entirely
unfit it for cultivation without artificial draining even when not overflown.

Ques. 5. Give the character of the SE. ¼ of SW. ¼ and S. ½ of NE. ¼ section 33, in said townships.

Ans. That is of the same character as that described in sections 23 and 27.

Ques. 6. Give the character of the SE. of NE. and S. ½ of SW. ¼ of SE. ¼ and S. ½ of SE. of sec. 5, town. 69, R. 40.

Ans. I am acquainted with each said tracts; they all lie on Walnut creek, which meanders through each tract except one forty, and each forty-acre tract is subject to overflow, and is so cut up and filled with ponds that it is entirely unfit for cultivation, except the SW. ¼ of SE. ¼, which has been drained by ditches; except that forty acre,
there is none of that land fit for cultivation at all, and that is made so
by said ditches, and on that it is only occasionally that a crop
305 can be raised.

Ques. 7th. Give the character of the N. ½ of NE. ¼ and N. ½ NW. ¼ and SW. ¼ of NW. ¼ of sec. 7, T. 69, R. 40, if you know.

Ans. That is all of the same character as that described above in section 5, and is unfit for cultivation.

Ques. State what is the character of sec. 5, town. 69, R. 41, west?

Ans. The river runs through it and it is all wet and subject to overflow by the river, so as not to be fit for cultivation.

Ques. 9. Give the character of sec. 9 in said township.

Ans. All of that section except the NW. ⅓ of NE. ¼ and N. ½ of NW. ¼ and SE. ¼ of NW. ¼, is swampy and subject to oveverflow; it lies in the forks of the river and Walnut creek, and is so wet and overflowed as to be unfit for cultivation.

Ques. 10. What is the character of sec. 11, T. 69, R. 41, if you are
acquainted with it?
306 Ans. 10. I am acquainted with it; I know that the S. ½ of
NE. ¼ S. ½ of NW. ¼ and N. ½ of SE. ¼ and N. ½ SW. ¼ is
very low, wet, and swampy and subject to overflow from Walnut creek, which runs through it, and is for that reason utterly unfit for cultivation; and I think the greater part of each forty in S. ½ of SE. ¼ and S. ½ of S.W. ¼ in said section is in the same fix, but am not positive of that.

Ques. 11. Are you acquainted with E. ½ sec. 21, T. 70, R. 41? if so, give its character.

Ans. I am not well acquainted with the lines bounding it, but know the land. I am satisfied that the water coming down on it from the bluffs renders it wet and marshy, and that it is unfit for cultivation without draining or some other artificial means to carry off or keep off the water.

Ques. State what is the character of the W. ½ of NW. ¼ sec. 27, T. 70, R. 41, west.

Ans. It is the same as that in sec. 21, T. 70. R. 41.

307 Ques. 13th. Give the character of S. ½ of SE. ¼ and W. ½ SW. ¼ SE. ¼ of SW. ¼ of sec. 33, town. 70, R. 41.

Ans. That land is all low, flat, wet land and frequently under water. There is a pond or small lake filled with water most of the time with a large growth of flags or reeds in and around it, on this land; the SE. ¼ of SE. is not so wet and swampy, but is subject to overflow and is not fit for successful cultivation; but the other forties, I think, is a perfect marsh or swamp, and fit for nothing but for deer and wolves, &c., to hide in.

MILTON YOUNG.

Subscribed and sworn to before me by Milton Young this May 3d, 1865.

J. L. MITCHELL, *Clerk.*

308 L. E. Webb being produced, answers as follows :

Ques. 1st. State your name, age, and place of residence.

Ans. My name is L. E. Webb. I am thirty-two years old, and live in section No. 2, T. 70, R. 42 west, in Fremont county, Iowa.

Ques. 2nd. How long have you lived in this county ?

Ans. Ten years.

Ques. Are you acquainted with the following described land, and how long have you been acquainted with it—the E. ½ of section 17, town. 70, R. 41 ?

Ans. I am. I have been for nine years.

Ques. 3d. State how that land is situated, and give its character.

Ans. The Nishenabottany river runs through the section near the center, and the land above described in that section is all subject to overflow, and is frequently overflowed by the river; it overflows every time the river gets full, and even before it gets full; it generally overflows for several weeks in the spring, and when the water goes off it leaves the land very wet, miry, and impassable, rendering said
309 tracts, the greater part of each forty, entirely unfit for cultivation.

Ques 5. State what is the character of the land in the W ½ of section 9. T. 70, R. 41 west, if you know.

Ans. It lies on the east side of the river, and Deer creek runs through the south half of it. It is all, or nearly all subject to overflow from those streams. There is a little in the southwest corner of that section higher and not subject to overflow. but not much. I am not familiar with all the lines of said section, but am satisfied that the greater part of each forty acre tract in the W ½ of said section is subject to overflow, and is wet, marshy, and unfit for cultivation.

L. E. WEBB.

Subscribed and sworn to before me, by L. E. Webb, this 3d day of May, 1865.

J. L. MITCHELL, *Cl'k.*

The further taking of depositions continued till to-morrow, May 4th, 10 o'clock, a. m.

J. L. MITCHELL, *Cl'k.*

MAY *4th.*

310 Taking of depositions resumed according to adjournment.

James A. Hodges, being produced, sworn, and examined, testifies as follows:

Ques. 1st. State your name, age, and place of residence.

Ans. My name is James A. Hodges; I am fifty-eight years old, and reside in Fremont county, Iowa.

Ques. 2d. How long have you lived there?

Ans. Since June, 1856.

Ques. 3d. State whether you are acquainted with the swamp land matters of said county. If so, state how you became so.

Ans. I am somewhat; I have filled the office of county judge one term, and I was drainage commissioner during the years 1859 and 1860, and had a good deal to do in laying off ditches and draining the swamp land.

Ques. 4th. Are you acquainted with the land in section 5, T. 69, R. 41? If so, state its character.

Ans. I am. West Nashenabottany river runs through it
311 from northwest to southeast, and all the land is subject to
overflow, and overflows frequently. It is thus rendered unfit
for culivation, and is, in fact, unfit.

Ques. 5th. Are you acquainted with the land in section No. nine (9,) town. seventy, (70,) range forty-one, (41,) west? If so, give its character.

Ans. I am; it is wet, swampy, and overflowed land; it was considered so much so as to be unfit for cultivation, without artificial draining, and in 1859, while I was drainage commissioner, the county had a ditch cut through this section, from near the northeast corner, passing out at the southwest corner, to drain it; I think said section was not susceptible of cultivation without draining.

Ques. 6th. State, if you know, the character of W $\frac{1}{2}$ and W $\frac{1}{4}$ NE $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 29, T. 70, R. 51.

Ans. The river runs through that land, and frequently overflows
it; it is overflown whenever the river rises full. The land is
312 low and unfit for cultivation by reason of its wet and over-
flowed character.

Ques. 7. Give the character of E $\frac{1}{2}$ NE $\frac{1}{4}$, and E $\frac{1}{2}$ SE $\frac{1}{4}$, and SW SE. sec. 31, T. 70, R. 41, if you can.

Ans. That land lies along close on the west side of the river, and is low and subject to overflow, and is frequently overflowed by the river. I have seen it overflowed several feet deep, and have waded waist deep in water over this land.

JAMES A. HODGES.

Subscribed and sworn to by James Hodges before me this May 4th, 1865.

J. L. MITCHELL, *Cle'k.*

313 John Martin, being produced and examined, deposes and testifies as follows:

Qus. 1st. State your name, age, and place of residence.

Ans. John Martin is my name; I am forty-six years old, and live on sec. 4, T. 69, R. 41 W, in Fremont county, Iowa, and have lived there four years.

Ques. 2nd. Are you acquainted with land in sec. 9, in said township?

Ans. I am; it is the section next south of the one I live on.

Ques. 3d. State what is the character of the land in that section.

Ans. Except four forties, which are the north half, the NW¼, and SE, NW and NW NE ¼, the balance of that section is subject to overflow. It lies between the Nisheabottany river and Walnut creek, and is frequently overflowed; and every spring, when the water goes off, it becomes very soft and marshy; the water also runs down on it from the bluffs; it is so overflowed and swampy as to be unfit for cultivation—all except the four forties above described.

JOHN MARTIN.

Subscribed and sworn to before me, by John Martin, this May 4, 1865.

J. L. MITHELL, *Clerk.*

314 Jackson Williams, being produced, sworn, and examined, deposes and answers as follows:

Ques 1st. State your name, age, and place of residence.

Ans. My name is Jackson Williams; I am thirty-seven years old, and live on section 11, in T. 70, range 41, west.

Ques. 2nd. How long have you lived there?

Ans. About nine years.

Ques. 3rd. Are you acquainted with the land in section No. 17, in T. 70, R. 41 west? If so, state its character.

Ans. I am; the river runs through it, and it is subject to overflown and does often overflow; I have seen, I think, nearly all the section under water at once. It generally overflows in the spring, and when not overflowed it is so wet and marshy as to be unfit for cultivation.

Ques. 4th. Could a man raise a crop on it?

Ans. Not unless it should be a very dry season, and one in which the river does not overflow at all.

315 Ques. 5th. How many such seasons as that has there been since you lived there?

Ans. There has not been any. But if such a one should happen to come, it might be cultivated. But I would never risk it. It is too wet, swampy and overflowed; all of it unless it be a few acres in the southeast corner of the southwest quarter that may be higher—a kind of sandy knoll.

Ques. 6th. Are you acquainted with section nine (9) in T. 70, R. 41 west? If so, give its character.

Ans. I am somewhat. It lies about the mouth of Deer creek, and east and north of it. It is all low, wet and subject to overflow, and is frequently under water, except a few acres on one of the forties.

Ques. 7th. How many acres do you think there are in that piece that are not swampy?

Ans. Nearly half the forty. I should think not over half of it.
There is a county ditch dug through the section that drains a
316 good deal of the land that is pretty wet section except the
knoll spoken of. It is too wet and swampy for cultivation without ditching.

JACKSON WILLIAMS.

Subscribed and sworn to before me by Jackson Williams, this 4th day of May, 1865.

J. L. MITCHELL, *Clerk.*

Further taking of depositions postponed till to-morrow, (May 5th,) 9 o'clock a. m.

J. L. MITCHELL, *Clerk.*

317 MAY 5TH, 1865, 9 O'CLOCK A. M.

Taking depositions resumed. A. J. Singleton, being produced, sworn and examined, answers as follows:

Ques. 1st. State your name, age, and place of residence.

Ans. My name is A. J. Singleton; I am fifty years old; live in section 7, T. 69, R. 40 west, close to the west line of said section; my farm is partly in sec. 12, T. 69, R. 41.

Ques. 2nd. How long have you lived there?

Ans. I moved to this county in the winter of 1841, and '42, and have been living over twelve years where I now reside.

Ques. 3d. Are you acquainted with the land in section 7, township 69, R. 40 W., and how long have you known it?

Ans. I am well acquainted with the land, and with the lines bounding the different tracts in it. About twelve years ago, I examined the land in said section in order to satisfy myself, and then as soon as I
could after the U. S. survey was completed, (which was not
318 then done, the land, I think, not being sectionized,) I entered
my land in sections 12 and 7, where I still live, and have been well acquainted with lands in said section ever since.

Ques. 4th. Describe what particular parts of that section (7, T. 69, R. 40) is actually swamp and overflowed; and give the character of the land fully.

Ans. The north part of the section is swampy and overflows, particularly the N ½ of NE ¼ and N ½ of NW ¼ and SW ¼ of NW ¼. Walnut creek runs through these tracts; the land is cut up with ponds, bayous, sloughs, &c., and is all frequently overflowed. It is low and wet, and when the water goes off, and also when not overfloed, during the spring season, it is so swampy as to be impassable with a horse. The county has been trying to ditch it and has helped it considerably, but still the greater part of it is unfit for cultivation. One ditch near the line on the west of the NW ¼ drains the land in the
NW ¼ of NW ¼, and makes the greater part of that forty sus-
319 ceptible of cultivation, but before the ditch was cut that forty
and all the balance described in that section was totally unfit
for cultivation. The rest remains so still.

A. J. SINGLETON.

Subscribed and sworn to before me by A. J. Singleton, this 5th day of May, A. D. 1865.

J. L. MITCHELL, *Clerk.*

320 Aaron Daniels, being produced, sworn and examined, deposes and testifies as follows:

Ques. 1st. State your name, age, and place of residence, and how long have you lived there?

Ans. My name is Aaron Daniels; I am forty-seven years old, and live in section 5, in T. 69, R. 40, west: have lived there six years, and have lived in this county ever since the spring of 1856.

Ques. 2nd. Are you acquainted with the land along Walnut creek, and particularly that selected as swamp land?

Ans. I am, for four or five miles along where I live.

Ques. 3d. Are you acquainted with the land in section No. 5, in T. 69, N. of R. 40, W. If so, state what part of it is swamp and overflowed.

Ans. I am. The SE ¼ of NE ¼ and the S ½ of SW and SW ¼ of SE ¼ and N ½ of SE ¼ is all genuine swamp lands. All too swampy for
cultivation, and is mostly subject to overflow. There is none of
321 these tracts described dry enough for cultivation. The tracts
refered to are designated by a + on the diagram hereunto
attached.

Ques. 4. Give the descriptions of the tracts refered to in section 7, t. 69, r. 40, which is actually swamp land.

Ans. The N. ½ of NW. ¼, and SW. of NW., and N. ½ of NE. ¼, as designated in the diagram here (*page 322) exhibited, is all swampy and overflowed. It overflows generally every spring, and is too wet and swampy for cultivation, except the NW. ¼ of NW. ¼, which has been drained. Before it was drained it was entirely unfit for cultivation, and the balance still is and has been ever since I have been in the county.

Ques. 5th. Describe the land in sec. 33, t. 70, r. 40 W., which you know to be swamp and overflowed land.

Ans. The SE. ¼, SW. ¼, and S. ½ NE. of the section marked

with a × on said diagram. I know it to be swamp and overflowed land. I have been acquainted with it eight years. It is wet and swampy during the early part of the season, continuing so
322 late as to defeat a crop. It also overflows. It sometimes
dries up by the first of June; at other seasons it continues overflowed all through August. The SE. ¼ has been ditched, and is now made much dryer; but before it was ditched it was as above described.

AARON DANIELS.

Subscribed and sworn to before me by Aaron Daniels, this 5th day of May, 1865.

J. L. MITCHELL, *Clerk.*

Range 40 *west*

[Here follows diagram, page 322.]

323 Samuel Welty being produced, sworn, and examined, testifies as follows:

Ques. 1st. State your name, age, and place of residence, and how long you have lived there.

Ans. My name is Samuel Welty; my age is sixty-two years; I live on section 11, t. 70, r. 41 W., Fremont county, Iowa. I own land in sections 11 and 14; I have lived there eight years.

Ques. 2. Are you acquainted with the land in section 3, in t. 70, r. 41 W.? If you are, state its character, as to whether it is wet or dry land, and particularly as it was when you settled up there.

Ans. I am acquainted with the land in said section. It lies north of section ten. The west half of the section has a good deal of wet land on it. The W. ½ of the SW. ¼ and the NW. ¼ of that section lies near the bluff; is low, wet, and boggy. The water from the bluffs makes it marshy for a good part of the season. There is a big slough coming down from Mills county, partly across the west part of sec. 3, and from that slough there is a ditch cut
324 down through the W. ½ SW. ¼, and acros ssection nine and
into Deer creek. This ditch was dug before I became acquainted with it, and it drains the water partly off of this slough, and drains some of the water off of this land. This land, in section three, was, when I became acquainted with it, wetter and more swampy than it is now. It was entirely too wet and marshy for cultivation, and with all the ditching yet done it is not fit for cultivation.

Ques. 3d. Are you acquainted with section 5, in t. 70, r. 41? If so, give its character.

Ans. I am. The river runs through it from north to south. It is low, wet, and marshy, and subject to overflow, except one little mound of sand, about large enough for a man to build a house on. All the balance is overflowed frequently, and is, and has been ever since I first saw it, unfit for cultivation. I have not traced the line on the west side, but am satisfied there is no tillable land on that section. I consider the land worthless. I would not pay the tax on it for it.

Ques. 4. Are you acquainted with section 7, in t. 70, r. 41 west? If so, give the description of the E. ½ of NE. ¼ and E. ½ of SE. ¼.

325 Ans. I know the section. I know the river runs through section 8, and 7 lies on the west of it; and I know there is a wide wet bottom on the west of the river, extending across section 8 and on to 7; but I am not acquainted with the lines in sec. 7, and cannot say certain about it; but from what I know and have seen I should consider the eastern part of sec. 7 too low and wet for cultivation.

Ques. 5th. Give the character of the NW. ¼ of NW. ¼ of section No. 15, t. 70, r. 41 W., if you can.

Ans. I am acquainted with that forty. I know just where it lies and corners; it is low, and more than half of it is too wet and boggy for cultivation, and cannot be cultivated without ditching. There are drains or little branches from the bluffs that spread out on it and make it thus wet. It has been too wet and swampy for cultivation ever since I became acquainted with it.

Ques. 6th. Give the character of section 17, t. 70, r. 41.

326 Ans. I know the E. ½ of that section. It is wet and subject to overflow. The river runs through this half, and it is often overflowed, and is entirely unfit for cultivation. The west half of the section I am not well enough acquainted with to say what its character is.

Ques. 7. State what is the character of the E. ½ of section 21, t. 70, r. 41 W.

Ans. The E. ½ of sec. 21, t. 70, r. 41, is wet and boggy, and unfit for cultivation without being drained. There was a ditch cut by the county, before I came here, across this tract of land that drain off a good deal of water. Without ditching it would be very wet and entireiy unfit for cultivation.

SAMUEL WELTY.

Subscribed and sworn to before me, by Samuel Welty, this 5th day of May, 1865.

J. L. MITCHELL, *Clerk.*

327 L. R. Henderson being produced, sworn, and examined, testifies as follows·

Ques. 1st. State your name, age, and place of residence, and how long you have lived there.

Ans. My name is L. R. Henderson; I am thirty-four years old; I live on section No. 18, in township 69, r. 41 W., and lived there for seven years.

Ques. 2nd. Are you acquainted with the SE. ¼ of NE. ¼ and the NE. ¼ of SE. ¼ of section 7, in t. 69, N. of r. 41 W.? and if so, state how long you have been acquainted with it.

Ans. I am and have been for six or seven years.

Ques. 3d. Describe the character of that land.

Ans. It lies on the bottom, west of the West Nishnabotana river, and is mostly low and very wet land. It is subject to overflow, and the principal part of it is often covered to a depth of from six inches to two or three feet in water, except a little knoll or ridge of only a few acres, probably four or five. This knoll is on the SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$. Besides this there is, perhaps, ten acres along on the south edge of NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ that might be cultivated. Besides these two
328 parts the balance of both forties is so swampy, subject to overflow, as to be unfit for cultivation. It is wet and marshy for a part of the season in the spring when not overflowed. There is also two ponds on it, about which the geese and cranes gather during the forepart of the season.

Ques. 4. Are you acquainted with the E. $\frac{1}{2}$ of SE. $\frac{1}{4}$, and the S W. $\frac{1}{4}$ SE. $\frac{1}{4}$ of section 19, t. 70, range 41, W.? If so, state its character.

Ans. I know where it lies, but am not acquainted with the lines; from my knowledge of it, and the land lying around it, my impression is it must be low and swampy, overflowed lands.

L. R. HENDERSON.

Subscribed and sworn to before me, by L. R. Henderson, this 5th day of May, 1865.

J. L. MITCHELL, *Clerk.*

The further taking of depositions is now postponed till to-morrow morning, 9 o'clock.

J. L. MITCHELL, *Clerk.*

329 MAY 6.

Taking of depositions resumed acccording to adjournment.

J. A. Harvey, of lawful age, being produced, sworn, and examined, answers as follows, to wit:

Ques. 1st. State your place of residence, and how long you have resided in this State, and where.

Ans. I resided in Sidney, Fremont county, Iowa, from about the middle of November, 1856, till in December, 1862, when I removed to Des Moines, where I still reside.

Ques. 2. State whether you purchased of Fremont county, Iowa, any of the land in controversy, and if so, state where; describe the land, and give all the particulars.

Ans. In 1855 I came out to this county, and concluded to purchase land and settle in this county; and the swamp lands having been selected and returned, and being offered for sale, I bought 320 acres of said swamp lands, including the SE. $\frac{1}{4}$ of sec. 21, township No. 70, N. R. 41, west, which is a part of the land in controversy, and took from the clerk of the District Court of said county a certificate of purchase, a true copy of which, marked Exhibit "B," is
330 here submitted to be attached to this deposition. I also bought for Robert Harvey some of said swamp lands, including

the NE. ¼ of NE. ¼ of section No. 9, t. 70, N. R. 41, W., and W. ½ of SW. ¼ of sec. 3, in said township, and received from said clerk a certificate of purchase, a true copy of which, marked Exhibit "C," is here submitted to be attached to this deposition. I paid for all said land, one half of the purchase money in gold, at the time of purchase, and have since paid most of the balance; on some of the land all, with the interest and taxes for some years. I purchased said land in good faith, having no doubt of the title of the county under the grant; and I still own that purchased for myself, in said sec. 21, and that purchased for Robert Harvey is still held or owned by him.

J. A. HARVEY.

Subscribed and sworn to by J. A. Harvey, before me, this May 6, 1865.

J. L. MITCHELL, *Clerk.*

331 *Copy of certificate.—Exhibit "B."—Certificate of purchase.*

FREMONT COUNTY, IOWA, *Dec.* 18, 1855.

It is hereby certified that Josiah A. Harvey has this day purchased the SE. ¼ in sec. 21, in township No. 70, in range 41, being swamp lands belonging to Fremont county, in the State of Iowa, at the rate of $1 25 per acre, the said tract containing 160 acres. And it is further certified that the said Josiah A. Harvey has paid in cash the sum of one hundred dollars for one-half the purchase money for said tract of land, and has executed his note for the sum of $100 00 for the remainder of said purchase money. And the said J. A. Harvey will be entitled to a fee simple conveyance to said tract of land, as soon as the said tract of land shall be confirmed to the county of Fremont, provided full payment therefor has been made.

Acres, 160. $100 00.

ELIAS FINDLEY, *Dist. Clerk.*

332 J. J. Singleton being produced, sworn and examined, testifies as follows:

Ques. 1st. State your name, age, and place of residence.

Ans. My name is J. J. Singleton; I am forty-six years of age, and have resided in this county ever since 1845.

Ques. 2. Are you acquainted with the land along the west Nishenabottany river and Walnut creek, in this county?

Ans. I am. I have been over them frequently.

Ques. 3d. State, if you know, what was the character of the land in sec. 9, t. 69, r. 41, west.

Ans. It lies between the river and Walnut creek, and all of it except, perhaps, three or four forties lying along the north line, and next to the northwest corner of the section, is low and wet, and subject to overflow, and is frequently under water for weeks. It is unfit for cultivation.

Ques. Was such its character 1850?

Ans. It was. Also, before that time and since.

333 Ques. 5th. Give the character of the land in sec. 11, in said township, if you can.

Ans. I have been acquainted with that land ever since 1848. Walnut creek runs through it. All that section except, may be, a strip about a quarter of a mile wide along the north side, is low and subject to overflow whenever the creek gets up. It is also marshy and swampy, and unfit for cultivation. It is swampy and marshy for a good part of each season, even when not overflowed from the creek.

Ques. 6th. Give the character of section 9, t. 70, r. 41 west.

Ans. That section all lies on the east side of the river, and is low, level land, subject to overflow, and is too wet and swampy for cultivation without ditching. I believe the county has cut a ditch through it.

Ques. 7th. What is the character of section 17, t. 70, r. 41?

Ans. The river runs through that section, and it is all subject to
overflow, and is frequently overflowed. It is also wet and
334 marshy a good part of each season. Such is the character of
all that section, except a small part of it, not over forty acres, which is, I think, on the southeast corner of the southwest quarter of section. Except this part, it is all unfit for cultivation.

Ques. 8th. Was such its character in 1850?

Ans. It was.

Ques. 9. Give the character of sec. 29, t. 70, r. 41, W.

Ans. The west ½ of that section, W. ½ of NE. ¼, and W. ½ of S E. ¼ is all swamp and overflowed land, and unfit for cultivation without ditching or dikeing. It lies on the river which enters it a little west of the northeast corner, and runs meandering through it, passing out at the southwest corner. This land is all frequently overflowed, besides being low and marshy at other times.

Ques. 10th. Was such its character in 1850?

Ans. It was. Also before and since.

Ques. 11. Are you acquainted with the character of E. ½ of NE. ¼, and E. ½ of SE., and SW. of SE. section 31, t. 70, r. 41.? If so, give its character.

335 Ans. I am. It lies along the river, on the west side. It is low, and subject to overflow, and is overflowed every time the river gets full, or out of its banks. It is so wet and so often overflowed as to be unfit for cultivation.

Ques. 12th. Of what character was it in 1850?

Ans. Of that described in the last answer.

Ques. 13th. Do you know what is the character of the S. ½ of SE. ¼ and W. ½ of SW. ¼ and SE. ¼ of SW. ¼ of sec. No. 33, T 70, R 41, west? If so, give it.

Ans. I know the character of that land. It lies on the east side of the river; a little stream called Honey creek comes in from the east, through section four, (4.) and empties in section five, (5;) just above the mouth of this creek and on the east side of the river there is a large pond or lake covering several hundred acres. This pond con-

tains water from year to year. I never saw it entirely dry. Around the edges of it it is grown up with a kind cf coarse reeds and flags from 6 to 10 feet high, which is an unmistakeable sign of swampy and miry land, unpassable for horses and cattle and will fre-
336 quently mire cattle. In the twenty years I have known this
pond, I never saw it so a person could ride through it. This pond includes the land above described in section 33, except perhaps the SE. ¼ of SE. ¼ which I think lies a little southeast of it, and between it and Honey creek. It is also low, wet, and swampy and marshy and frequently covered with water. All that land described in that section is unfit for cultivation, and most of it is utterly worthless except for water fowls and game.

Ques. 14th. State what is the character of the land along Walnut creek and particularly that selected and claimed by the county as swamp land, and what it was in 1850.

Ans. The bottom land along that creek is very low, most of it marshy; generally overflows every spring, and wet and swampy for a good part of the season, and some of it all the time. Tho difference between the wet and dry land is very distinctly marked; all that is on the first bottom being so wet and swampy as to be entirely unfit for cultivation, (aside from the overflows without being reclaimed by artificial means.) Such I believe is all the land selected as
337 swamp lands on this creek, though I am not acquainted with
all the lines, and such was its character in 1850.

J. J. SINGLETON.

Subscribed and sworn to, by J. J. Singleton, before me this 6th day of May, 1865.

J. L. MITCHELL, *Clerk.*

338 State of Iowa, *Fremont County, ss:*

I, J. L. Mitchell, clerk of the District Court of said county, hereby certify that the foregoing depositions of Granville Mann, James Flamery, Wm. M. Holloway, James M. Holloway, J. N. Johnson, W. M. Woodrum, Fred. Rector, John Hendrickson, George Forney, J. D. Blanchard, Samuel Chambers. Wm. J. Holloway, Arch Mann, Milton Young, L. E. Webb, James A. Hodges, John Martin, Jackson Williams, A. J. Singleton, Aron Daniels, Samuel Welty, L. R. Henderson, J. A. Harvey, and J. J. Singleton, were taken before me at my office, in Sidney, in pursuance of the notice hereunto attached, commencing on Monday May 1st, 1865, and continuing from day to day between 8 o'clock a. m., and 8 o'clock p. m., till the 6th day of May, when said depositions were completed, to be used in evidence on behalf of the plaintiff on the trial of the cause entitled, Fremont County *vs.* The B. and M. R. R. R. Co.; that each of said witnesses was by me first duly sworn to testify the truth
339 in said cause: that their depositions were all reduced to writing
by me, except that of J. A. Harvey, which was written by himself; that they were then read over by me to said witnesses, respectively; and by them subscribed and sworn to before me by the

respective witnesses; those of Granville Mann, James Flamery, Wm. M. Holloway, Jas. M. Holloway, J. N. Jonhson, and W. M. Woodrum, of the 1st day of May; those of Fred. Rector, John Hendrickson, George Forney, J. D. Blanchard, Samuel Chambers, and Wm. J. Holloway, on the 2d day of May; those of Arch Mann, Milton Young, and L. E. Webb, on the 3d; those of James A. Hodges, John Martin, and Jackson Williams, on the 4th; those of A. J. Singleton, Aaron Daniels, Sam'l Welty, and L. R. Henderson, on the 5th, and those of J. A. Harvey, and J. J. Singleton, on the 6th of May, all between the hours aforesaid; and I further certify that the exhibits attached to the depositons of J. N. Johnson, Aaron Daniels and J. A. Harvey, are the same refered to by those witnesses respectively, in their
depositions, and that the list of lands described in plaintiff's
340 petition was exhibited to said witnesses.

In testimony whereof, I have hereunto set my hand and official seal, at my office, in Sidney, in said county, this 6th day of May, A. D. 1865.

[SEAL.] J. L. MITCHELL, *Clerk.*
[Rev. stamp.]

Witness fees claimed.

Granville Mann,	1 day,	8 miles	$1 80
Jas. Flamery,	"	"	1 80
Wm.M. Holloway,	"	10	2 00
Jas. M. Holloway,	"	10	2 00
J. N. Johnson,	"	9	1 90
W. M. Woodrum,	"	8	1 80
Fred. Rector,	"	12	2 20
John Hendrickson,	"	12	2 20
George Forney,	"	12	2 20
J. D. Blanchard,	"	15	2 50
Samuel Chambers,	"	16	2 60
Wm. J. Holloway,	"		1 00
Arch Mann,	2 "	8	2 80
Milton Young,	1 "		1 00
James A. Hodges,	1 "	4 miles	1 40
John Martin,	1 "		1 00
Jackson Williams,	1 "		1 00
A. J. Singleton,	1 "		1 00
Aaron Daniels,	1 "	12 miles	2 20
Samuel Welty,	1 "	18 "	2 80
L. R. Henderson,	1 "		1 00
My fees for taking depositions			25 00

May 6th, 1865.

J. L. MITCHELL, *Clerk.*

Rec. 181—10

341 *Fee bill.*

Commencement fee	$1 50
M. Heisly serving notice, pd. by J. A. Harvey	2 85
Sec. of State, for certificate, " " "	2 00
A. B. Copland, clerk of Mills County for taking deps., pd. by J. A Harvey	5 00
N. Lathrop, witness, " " "	1 50
J. Soloman, " " " "	1 00
D. H. Soloman, " " " "	1 00
Wm. Street, " " " "	1 00
H. Watkins, " " " "	1 00
Postage, " " "	30
J. L. Mitchell, clerk of Fremont Co., taking dep's	25 00
Granville Mann, witness	1 80
James Flamery, "	1 80
James M. Holloway, "	2 00
Wm. M. Holloway, "	2 00
J. N. Johnson, "	1 90
W. M. Woodrum, "	1 80
Fred. Rector, "	2 20
John Hendrickson, "	2 20
Geo. Forney, "	2 20
J. D. Blanchard, "	2 50
Samuel Chambers, "	2 60
Wm. J. Holloway, "	1 00
Arch. Mann, "	2 80
Milton Young, "	1 00
342 L. E. Webb, "	1 00
James A. Hodges,	1 40
John Martin, "	1 00
Jackson Williams, "	1 00
Aaron Daniel, "	2 20
Samuel Welty, "	2 80
L. R. Henderson, "	1 00
L. Singleton, "	1 00
A. Leitch, "	1 00
John Hiatt, "	1 00
John Ormsby, serving subpœnas	5 95
J. L. Mitchell, cl'k entering judgement.	1 50
J. L. Mitchell, " taxing cost	50
" " " two continuances	30
	92 80
This transcript.	15 00
	$107 80

343 STATE OF IOWA, *Fremont County:*

I, J. L. Mitchell, clerk of the District Court in and for the county of Fremont and State of Iowa, do hereby certify that the foregoing pages contain a full, true, and correct transcript of all the original pleadings and record entries in the above-entitled cause, which appears of record in my office, together with the original of all the documentary evidence and maps and exhibits used in evidence in the trial of said cause in said District Court.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at my office, in Sidney, in said county, this 12th day of June, A. D. 1866.

[SEAL.] J. L. MITCHELL, *Clerk.*

344 At a Supreme Court of the State of Iowa, begun and held at the capital, in the city of Des Moines, on Tuesday, the 7th of June, A. D. 1866.

Present, the Hon. Ralph P. Lowe, C. J., Hon. John F. Dillon, Hon. Chester C. Cole, Hon. George G. Wright, justices, when the following, among other proceedings, were had and done, to wit:

Appeal from Fremont county.

FREMONT COUNTY
vs.
BUR. & MO. R. R. R. Co., appellant. } No. 2,522.

FRIDAY, *June* 22, 1866.

This day this cause coming up for hearing, was continued.

At a Supreme Court of the State of Iowa, begun and held at the capital, in the city of Des Moines, on Monday, the 3d day of December, A. D. 1866.

Present, the Hon. Ralph P. Lowe, C. J., Hon. John F. Dillon, Hon. Chester C. Cole, Hon. George G. Wright, justices, when the following, among other proceedings, were had and done, to wit:

345 *Appeal from Fremont county.*

FREMONT COUNTY
vs.
BUR. & MO. R. R. R. Co., app'l't. } No. 2,522.

TUESDAY, *December* 4, 1866.

This day this cause coming up for hearing, was submitted to the consideration of the court on printed argument of counsel.

Appeal from Fremont county.

FREMONT COUNTY
vs.
BUR. & MO. R. R. R. Co., app'l't. } No. 2,522.

FRIDAY, *December* 28, 1866:

Ordered that this cause be continued for further advisement.

At an argument term of the Supreme Court of Iowa, begun and held at the city of Davenport, in said State, on Tuesday, the 2d day of April, A. D. 1867.

Present, the Hon. Ralph P. Lowe, C. J., Hon. John F. Dillon, Hon. Chester C. Cole, Hon. George G. Wright, justices, when the following, among other proceedings, were had and done, to wit:

346 *Appeal from Fremont county.*

FREMONT COUNTY
vs. No. 2,522.
BUR. & MO. R. R. R. CO., app'l't.

TUESDAY, *April* 11, 1867.

In this cause, the court being now sufficiently advised in the premises, affirm the judgment of the court below, and file their written opinion.

At a Supreme Court of the State of Iowa, begun and held at the capital, in the city of Des Moines, on Tuesday, the 4th day of June, A. D. 1867.

Present, the Hon. Ralph P. Lowe, C. J., Hon. John F. Dillon, Hon. Chester C. Cole, Hon. George G. Wright, justices, when the following, among other proceedings, were had and done, to wit:

Appeal from Fremont county.

FREMONT COUNTY
vs. No. 2,522.
BUR. & MO. R. R. R. CO., app'l't.

SATURDAY, *June* 8, 1867.

At the argument term, held at Davenport in April last, the court ordered that this cause be affirmed. It is now considered by
347 the court that the judgment and findings of the court below be, and the same hereby are, affirmed; that a writ of procedendo issue accordingly, and that the appellee have and recover of and from the appellant the costs in this behalf laid out and expended at this court taxed at nineteen dollars and twenty-five cents, and that execution issue therefor.

348 STATE OF IOWA, *Supreme Court*, *ss*:

I, C. Linderman, clerk of the Supreme Court of Iowa, do hereby certify that the foregoing pages contain a full, true, and complete copy of all the pleadings, exhibits, depositions, documentary evidence and records of this court in the case of Fremont county against The Burlington and Missouri River Railroad Company, as full, true, and complete as the same remain on file and of record in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the Supreme Court of Iowa. Done at the city of Des Moines, this 27th day of November, A. D. 1867.

[SEAL.] C. LINDERMAN, *Clerk.*

[5-cent stamp.]

349 The President of the United States of America to the judges of the Supreme Court of the State of Iowa:

Because in the record and proceedings, and also in the rendition of the judgment of a plea in said court, wherein Fremont county, in the State of Iowa, is plaintiff, and the Burlington & Missouri River Railroad Company are defendants, a manifest error hath happened to the damage of said defendant, you are hereby commanded, if judgment be therein given, that then under your seal you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington city on the first Monday of December next, to be then and there held, that the said record being inspected, the said Supreme Court may cause the said errors to be corrected, which of right ought to be.

Witness Hon. Salmon P. Chase, Chief Justice of the United States Supreme Court and the seal of said Supreme Court, this 17 day of June, A. D., 1867.

Attest:

[SEAL.] W. G. WOODWARD,
Clerk Circuit Court U. S., Iowa.

The Supreme Court of Iowa hereby acknowledge service of this writ of error on us this 17 day of June, 1867.

R. P. LOWE,
Chief Justice.

Endorsed: Writ of error, Fremont county. Filed June 17, '67. C. Linderman, cl'k.

350 Supreme Court of Iowa.

Know all men by these presents, that we, the Burlington and Missouiri River Railroad Company, as principal, and C. E. Perkins and E. D. Rand as security, are held and firmly bound unto Freemont county in the sum of two hundred dollars, to be paid to the said Mills county; to which payment, well and truly to be made, we bind ouselves, and each of us, jointly and severally, firmly by these presents. Dated this 17th day of June, A D. 1867.

The condition of this obligation is such, that whereas the said Freemont county has obtained a decree in chancery, in the Supreme Court of the State of Iowa, against the said Burlington & Missouri River Railroad Company, affirming the decree of the District Court of said Freemont county, and quieting the title of said county to certain lands, and for cost; and whereas the said Burlington & Missouri River Railroad Company, in order to obtain a reversal of the same, hath sued out a writ of error to the Supreme Court of the United States: Now, therefore, if the above-named Burlington and Missouri River Railroad Company shall prosecute its said writ of error to effect, and shall pay all costs if it fail to make good its plea, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

The Burlington and Missouri River Railroad Company, by
D. RORER,
Solicitor of Record in s'd case.

Executed and delivered in presence of us.
C. E. PERKINS.
E. D. RAND.

Witness: WM. IRVING.

[50-cent int. rev. stamp.]

Endorsed: Filed July 26, '67. C. Linderman, cl'k.

JUNE 17, 1867.

The within bond and the security therein are approved.
SAM. F. MILLER, *Judge.*

N. B. No supercedeas is designed, but merely the bond for costs.

351 United States of America to the County of Fremont, in the State of Iowa, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of Iowa, wherein the Burlington and Missouri River Railroad Company are plaintiffs in error, and you are the defendant in error to show cause, if any you have, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness Hon. Samuel F. Miller, one of the justices of the Supreme Court of the United States, this 19 day of June, A. D. 1867.
SAM. F. MILLER.

JULY 12th 1867.

The foregoing notice was duly served this 12th day of July, 1867.

J. A. HARVEY,
Counsel for Fremont County.

Endorsed: Citation, Fremont county. Filed July 26, '67. C. Linderman, cl'k.

I obedience to the within writ of error I return the same with the citation, bond, and transcript hereto annexed to the clerk of the Supreme Court of U. S.

C. LINDERMAN,
Clerk Supreme Court, Iowa.

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C. LINDERMAN,
Clerk Supreme Court, Iowa.

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SUPREME COURT

OF THE

UNITED STATES.

BURLINGTON & MISSOURI RIVER RAILROAD COMPANY, } Pltff. in Error.
[No. 181.] *vs.*
FREMONT COUNTY, } Deft. in Error.

BRIEF OF PLAINTIFF IN ERROR.

I.

This case is here, from the Supreme court of Iowa, on writ of error.

Fremont County, complainant below, filed a bill in the State Court to quiet title to certain lands; making claim under the swamp land grant of 1850, U. S. Stat. at Large, vol. ix, 519, and amendatory act of 3d March, 1857, U. S. Stat. at Large, vol. xi, 251.

The Railroad Company, defendant below, makes title to the same lands under the railroad grant of 15th May, 1856, and amendatory acts, and the acts of the Iowa General Assembly of July 4th, 1856, and January 28th, 1857. Revision of 1860, pp. 215, 221.

The lands in dispute were adjudged to the Railroad Company, and certified accordingly, after a hearing of the parties, before the commencement of this suit.

The Court below decreed in favor of the County, and from that decree the Railroad Company prosecutes this writ of error.

The case involves not only the construction of the said several acts of Congress, but also the finality of the decision of the Interior Department, and the power of the State Court to set it aside.

II.

OF THE TERM "SWAMP LANDS."

The Swamp Land grant, is a specific grant. The term "Swamp and overflowed lands" is used in the act, in reference to those lands *described* as such in the surveys, field notes, plats, and books of the Land Department of Government. Hence the Secretary of the Interior and Commissioner of the General Land Office correctly measured the extent of the grant as confined to those lands returned as "Swamp and overflowed."

The laws of Congress require United States Surveyors to note and return description and quality of lands surveyed, with field notes. Act of May 18, 1796, and subsequent acts in reference thereto. Lester's Land Laws, p. 18; Brightley's Dig., 466, 493, 494, &c.

The lands granted by the Act of 1850, and subsequent acts, as swamp, were as clearly defined, as were the School Lands, Salt Lands, and Mineral Lands, on the books of the Department. The grant is the same as to have said, "all those lands returned as *overflowed and swamp*." In illustration of this, apply the language of the Act:

"It shall be the duty of the Secretary of the Interior—as soon as may "be practicable—to make out an accurate *list* and *plats* of the lands *de*"*scribed* as aforesaid, and transmit the same to the Governor, * * and at "his request to cause a *patent* to be issued to the State therefor." Act of 28th of September, 1850. Lester's Land Laws, 169. Here the word "*described*" is evidently used in reference to the files and books of the Department. Were it otherwise, some means would have been afforded to the Secretary of ascertaining what lands were in *fact* swamp. This is rendered more certain by the last section of the Act of 1850, which extends the benefit of the Act to all the other States (save Louisiana,) in which such "swamp and overflowed lands KNOWN and DESCRIBED *as aforesaid* may be situated." Lester's Land Laws, p. 170.

It results from this, that all orders of the Department allowing Governors to make swamp land selections, and all State Legislative acts contemplating selections, are simply void. For Congress alone may define the extent and the mode of measuring the grant. Wilcox *vs.* Jackson, 13 Pet., 517; Irvine *vs.* Marshall and others, 20 How., 558; Jourdan *et als. vs.* Barrett *et als.*, 4 How., 169. This disposes of all State acts and State selections.

III.

THE LEGAL TITLE IS IN PLAINTIFF IN ERROR.

When lands are granted by a law contemplating a *patent*, then the legal title passes *only by patent*. But when lands are granted by a law, which in itself, (for want of identity,) does not convey the fee-simple, and yet *does not provide* for, or *require* the issuing of a patent, then the title passes by *lists* of the lands, to eminate from the Land Department. Act of Congress, 3d August, 1854. Lester's Land Laws, 236. *And this act* is, also, *retrospective in express terms.*

Now, the original Swamp Land Act of 1850, and the confirmatory act of 1857, *both require patents to issue*, to carry title. None have issued for the lands in suit, to the county, or to the State. The act under which plaintiff in error claims, requires no patent, but *provides* for lists; we have the lists, which, with the grant from the State, are in evidence. They vest the title in us by a Congressional grant, which is of higher character than a patent. Lester's Land Law, 258. Grignon *et als. vs.* Astor *et als.*, 3 How., 310.

The decision of this Court, in Allison *vs.* Halfacre, 11 Iowa, 450, and the several decisions of the Department, relied on by complainant, holding that title, under the Act of 1850, passed to the State at once, and *without more*, seem to have grown out of a misapplication of precedents under the Louisiana grant of 2nd March, 1849, which in fact have no bearing on the case before us. So much of that act as allowed a *personal examination* of the lands, is confined *exclusively* to Louisiana. The decision of the Secretary of the Interior, relied on by defendant in error, only intends to say, that when *vested by patent*, then the title relates back to the date of the act; giving title *from the date*. Otherwise his decision overrides the express provisions of the acts of 1850 and 1857, which require a patent, to pass the title. It is at present a naked promise of a grant, to be perfected by patent in *futuro*, but rendered impracticable by an intervening perfect legislative grant, with *lists*, to plaintiff in error.

IV.

WE HAVE THE SUPERIOR EQUITY.

The railroad grant pre-supposes a consideration. A *quid pro quo*. It declares the road a public highway; imposes on the Company the carrying of mails on government's own terms, and asserts a right in the government to a free use of the road, forever, for transportation of government property and troops; a consideration which, if valid, may in time amount to more than the value of all the government lands in all the counties through which the road passes. Act of Congress, May 15th, 1856. Lester's Land Laws, pp. 258, 259. Now what is the claim of defendant in error based on? Simply a gift—a *naked* gift—from the State. What the claim of the State? A gift—*a naked gift*—from the United States. No, not even a *gift*, but a *naked promise of a gift*, to be made; for no title has passed, either to the State or to defendant in error. The defendant in error is a *volunteer*, claiming *under a volunteer*; each claim being based on a *naked promise.*

V.

OUR TITLE RELATES BACK TO DATE OF THE GRANT.

So soon as our lists indentified the lands, both within the original six miles, and within the subsequent limits, the legal title passed to us, and by *relation* dates back to the date of the original grant; or at all events to the date of survey, which survey and location on the ground, was in October, 1856. Landees *vs.* Barrett, 10 How., 348; Lessuir and others *vs.* Price, 12 How., 59. The *confirming* act relied on by defendant in error, unlike this, *does not retroact by relation*, so as to override an intermediate grant. If it gives title at all, it is from its own date. Les Bois *vs.* Bramel, 4 How., 449; Choteau *vs.* Eckhart, 2 How., 345. So the doctrine of *prior in time, prior in right*, is with us, although the swamp land act is the oldest.

VI.

DISCLAIMER OF THE STATE.

The effort of the State, to *disclaim* the trust as in favor of plaintiff in error, and to *affirm* it in favor of the county, relied on by defendant in error, is, to use the mildest term, *of no force.* It places the State in a false position. A trustee can not meddle with the trust fund, to enlarge, diminish, or divert it, in any case, much less the State in regard to a government grant of land. As previously shown, the United States alone may declare the effect of the grant, and the manner of identifying it, and of passing title. Irvine *vs.* Marshall *et als.*, 20 How., 558; Wilcox *vs.* Jackson, 13 Pet., 519; Jourdan *vs.* Barrett, 4 How., 169.

VII.

THE CONFIRMATORY ACT OF 3D MARCH, 1857.

By this Act, an *adjudication* is required as to whether the lands were "appropriated;" the exclusion of such as should be found to have been appropriated, and an approval of the lists as to the residue, if any. Such was the action of the department. This act confirms only such lands as *remained unappropriated.* Not being returned as *swamp*, they were *appropriated* under act of May, 1856, and the location of the road, before the act of March, 1857 was passed. Lester's Land Laws, 285; Stat. at Large, vol. ii, p. 251.

Not only the PATENTING, but the *approval* is to be in accordance with the original act. That is in each of the two classes of cases; each under its own act. The granting acts, and the confirming act, are in *pari materia*, and must be construed together. Sedg. on Stat. and Con'l. Law, 247, 248, 249, 250; State of Indiana *vs.* Springfield, Township, (involving acts about school lands,) 6 Ind. Reps., 83. The meaning of the law is to be ascertained from the language thereof, and not from extraneous facts or circumstances. Sedg. on Stat. and Con'l Law, 241, 242, 243, 244, 245, 246 and 247.

The Act of March 2d, 1849, has no bearing on the Iowa Swamp Land Grant. Under that act, selections were made, *not* by the counties, nor State, nor by *interested individuals,* but by "experienced and *faithful deputies*" of the United States Surveyor General. Defendant's selections were, in either event, without authority of law. A mere meddlesome interposition into the duties of the National Government. It involves not a mere irregularity, but a *want of power*. The United States alone may discharge these functions, through officers of the proper departments. Elliot *et als. vs.* Piersol *et als.*, 1 Pet., 340; Haydell *vs.* Dufresnee, 17 How. 24; Wilcox *vs.* Jackson, 13, Pet., 511; Irvine *vs.* Marshall *et als.*, 20 How., 558; Jourdan *vs.* Barrett, 4 How., 169.

VIII.

THE DECISION OF THE SECRETARY OF THE INTERIOR IS IN OUR FAVOR, AND IS FINAL.

On this point the Court holds, that where, under an act of Congress the Secretary of the Treasury had the power to select, his decision is "*conclusive.*" Campbell *vs.* Doe, 13 How., 249. And the same is the effect if the decision eminates from the Commissioner of the General Land Office, who acts under the Secretary's supervision. True it is, that the case last cited involved the action of the Treasury Department, performed before the Interior Department was organized; but by law, the like power was vested in the Interior Department when it was created, and therefore the decisions of the Interior Secretary are alike final in similar cases. McGuire *vs.* Tyler, 1 Black., 202. Where the law specially refers a matter to the Secretary or other officer, his decision, if *honestly made, is conclusive.* Hydell *vs.* Dufresne, 17 How., 24–30. Foley *vs.* Harrison, 15 How., 433. The case before us does not involve fraud of the plaintiff in error, or the Department, but alleges *error* of the Secretary, in deciding what was confided to his judgment. In the case last cited, where back lands were granted to front proprietors, to be divided among them by United States surveyors, in a suit involving the action and decision of these officers, there being *no fraud alleged*, the Supreme Court held that neither State nor Federal courts could interfere to control their acts; and that "great confusion and litigation would ensue" from such interference. That such interference, if allowed, might *suspend the action of the United States*, and its departments altogether. Haydell *vs.* Dufresne, 17 How., 38–30.

The case before us is an apt illustration of the truth and wisdom of this decision. The Swamp Land Grant and Railroad Grant are common to most of the States. Perhaps to all, wherein there were public lands of the United States. If the courts of Iowa, by their construction of these grants, can control the action of the Department at Washington, so can the courts of each of the other States interested in the grant—not only nullifying the action of the Department of Government, but establishing as many different rules of action in the Department, as there are States receiving the grant.

IX.

THE WITHDRAWAL FROM MARKET DID NOT AMOUNT TO AN APPROPRIATION.

The withdrawals, which have been adjudged to amount to an *appropriation* of the lands, were all made by express authority of law. There is no law for these. In the cases relied on by defendant in error, the lands were adjudged to have been previously appropriated by act of Congress. Chotard *vs.* Pope, 7th Curtis' S. C. Decisions, pp. 87, 89. The Court say, in that case, "*Congress*" (not the

Department,) have from time to time *appropriated* lands by *withdrawing* them from the great mass of lands, *for public use.* In Wilcox *vs.* Jackson, the appropriation was for Military and Indian purposes, also made by virtue of *express authority of Congress.* Act of May 3d, 1798 ; Act of April 21st, 1806, and act of 14th of June, 1809 ; Wilcox *vs.* Jackson, 13th Pet. 512. It does not follow that because the withdrawal for government use, or other public purpose, under *authority* of *express law,* amounts to an appropriation, that therefore, at the whim of the Commissioner of the General Land Office, or other officer, *without law,* whole districts of country can be *appropriated* by a mere order of withdrawal from market, or suspension of sales. It would be a confounding of *principles* with *mere names.* In the case of Hoofnagle *vs.* Anderson, 7 Wheat., 212, the land had already been patented, and *that alone,* is what was there held to be an appropriation.

The case of Arnold *vs.* Grimes, turned entirely on fraud. It is not in point. The case of Cooper *vs.* Roberts, 18 How., arose from the compact of admission of Michigan, by which all the 16th sections passed to the State, *without* patent. The case of Halfacre above referred to amounts *to nothing.* The particulars do not appear. The Court could but decide on it as they found it. It no doubt answered the purpose for which it was gotten up. It settled the question *between,* and perhaps to the satisfaction *of,* the parties; but if so, we may neither complain of it nor be affected thereby. The fulness of the case, is not sufficiently shown for it to be a *precedent.*

X.

THE ORAL TESTIMONY OF DEFENDANT IN ERROR.

All this goes for nothing under our motion to exclude it, or will avail nothing if admitted.

Courts will not receive evidence of extrinsic facts, taking place at the time of, or prior to, the passage of a law, as to its intent. Sedg. on Stat. and Con'l. Law, p. 241.

DAVID RORER, & H Strong

Attorney for Plaintiff in Error.

IN THE SUPREME COURT
OF THE
UNITED STATES.

NO. 181.

THE BURLINGTON & MISSOURI RAILROAD COMPANY, PLAINTIFF IN ERROR
VS.
FREMONT COUNTY, IOWA.

In error to the Supreme Court of Iowa.

BRIEF AND ARGUMENT FOR APELLEE.

J. A. HARVEY,
Attorney for Appellee.

IN THE SUPREME COURT

OF THE

UNITED STATES.

NO. 181.

THE BURLINGTON & MISSOURI RAILROAD CO.

PLAINTIFFS IN ERROR *vs.* FREMONT COUNTY, IOWA.

In error to the Supreme Court of Iowa.

IN CHANCERY.

ABSTRACT.

This suit was brought in the District of the State, by Fremont county, to quiet the title to certain lands described in the list appended to her petition, amounting to 12,754.49 acres. Both parties claim the lands. The county claims them as *swamp and overflowed lands*, under the acts of September 28th, 1850, and certain other acts of Congress, and of the General Assembly of the State, passed subsequently thereto. The Railroad Co. claims them under the Act of Congress of May 15, 1856, and the Act of the General Assembly of the State, of July 14, 1856.

The District Court rendered a decree declaring the right and title to be in the county and the claim of the Railroad Co. to be null and void. The Railroad Co. appealed to the Supreme Court of the State, which after a full hearing affirmed the decree of the District Court. See the opinion of the Court, 22 Iowa, 91. The Railroad Co. now brings the case into this court.

Statutes under which appellee claims.

1. Act of Congress entitled "An Act to enable the State of Arkansas and other States to reclaim the 'swamp land' within their limits," Approved Sept. 28, 1850.

9. *U. S. Stat. at large*, 519; *Lester's Land Laws*, 196.

2. Act of Congress entitled "An Act to confirm to the several States the swamp and overflowed lands selected under the act of September twenty-eight, eighteen hundred and fifty, and the act of the second of March, eighteen hundred and forty-nine," approved March 3, 1857.

11 *U. S. Stat.* 251; *Lester's Land Laws*, 285.

3. Act of the Legislature entitled "An Act to dispose of the swamp and overflowed lands within this State, and to pay the expenses of selecting and surveying the same," passed Jan. 13, 1853, (Revision of 1860, p. 148), and the act supplemental thereto, passed Jan. 24, 1863, (Revision of 1860, p. 153).

Statutes under which appellant claims.

1. Act of Congress entitled "A bill making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain Railroads in said State, approved May 15, 1856.

11 *U. S. Stat.* 9; *Lester's Land Laws*, 258.

2. Act of the Legislature, entitled "An Act to accept the grant and carry into execution the trust conferred upon the State of Iowa, by an Act of Congress entitled An Act making a grant of lands to the State of Iowa, in internate sections, to aid in the construction of certain Railroads in said State, approved May 15, 1856."

Revision 1860, 215.

3. Act of Congress entitled "An Act to vest in the several States and territories the title in fee of the lands which

have been, or may be, certified to them," approved Aug. 3d, 1854.

10 *U. S. Stat.* 346; *Lester's Land Laws* 236,

The Swamp Lands in Fremont county were selected at two different times, and embraced in two separate lists, by Benjamin Rector, who was duly appointed for that purpose under the provisions of the Act of the General Assembly of Jan. 13, 1853, above mentioned.

The first selections were made in the spring of 1854—sworn to by the Agent or selecting officer May 27, 1854, and sent to the Secretary of State, who transmitted the list to the Surveyor General's Office June 7, 1854.

See certified copy of said list from Surveyor General, Record, pp. (15 *to* 25).

The Surveyor General examined the list of lands, compared them with "the Field Notes, plats, and other evidences on file in his office," rendered his decision thereon, (as required by the Department,) pronouncing them *swamp and overflowed lands*, and on the 20th of Sept., 1854, reported them to the General Land Office as such.

See Record, pp. 25 *to* 34.

The report of the Surveyor General, embracing these lands, and deciding them to be *swamp and overflowed lands*, was filed in the General Land Office on the 27th day of September, 1854, as shown by the certificate of the Commissioner himself.

Record p. 34.

These lands were also reported by the Surveyor General to the local Land Office at Council Bluffs, as required by the Interior Department, and the report filed in said office on the 23d of October, 1854.

Record, pp. 43 *to* 52.

Immediately upon the receipt of said report, the lands were, as *ordered by the Commissioner of the General Land Office*, "properly noted on the tract-books in the office, and withdrawn from market."

Record, pp. 51 *and* 52, *and also* 97 *and* 98.

This testimony then, from the Surveyor General, from the Commissioner of General Land Office, and from the Register of the Land Office at Council Bluffs, proves that the lands embraced in said list were duly selected and reported by the State to the Surveyor General and were by him pronounced swamp lands under the instructions given him from the General Land Office. (The instructions from the Interior Department required the Suveyor General to examine and determine the question of the character of the land; that matter being especially submitted to him for decision. (See Lester's Land Laws, p. 543, 551, and 559.) And that all this was done, and the land withdrawn from market on the 23d Oct., 1854.

In this list and amongst the lands thus reported and withdrawn from sale are about 7,230.58 acres of the lands in controversy.

The selection of the remaining swamp lands in said county was completed early in the year 1856, the work having been principally done during the year previous. This list of selections was sworn to by the agent or selecting officer, on the 20th of March, 1856, and duly returned to the Surveyor General, (Rec. 52 to 55,) and by him reported to the General Land Office on the 8th of January, 1857, with his decision declaring the lands therein described to be *swamp and overflowed* as contemplated by said act of Sept. 28th, 1850, (Rec. p. 58). This report of the Surveyor General, with the list and his decision thereon, was filed in the General Land Office, as the Commissioner certifies, on the 21st of January, 1857, (Rec., p. 59).

The lands were also certified to the Land Office at Council Bluffs as swamp land under the instructions of the

Department, by the Surveyor General, his report being filed in that office, as the Register certifies, on the 23d of January, 1857, (Rec., p. 65 to 68). These lands were also at once, after the reception of this report, noted on the books and plats of that office as swamp lands and withdrawn from sale, as expressly ordered by the Commissioner of the General Land Office in his letter of Sept. 30th, 1854, to the Register and Receiver of that office, (Rec., p 68). This second list contains the balance of the lands in controversy, ~~which.~~

From these abstracts of the records, from the Surveyor General, the Commissioner of the General Land Office, and Register of the Land Office at Kanesville (now Council Bluffs,) duly authenticated, it is shown that these lands were duly selected and returned by the State to the Surveyor General, that they were by him decided to be swamp within the meaning of the act of Sept. 28th, 1850, and as such were reported by him to the General Land Office and to the Local Land Office, and that they were so designated on the records and plats of the office and withdrawn from market under the express order of the Commissioner of the General Land Office, and that this was all done and completed prior to and on the 23d day of January, 1857.

Of the lands thus selected and reported, all except that in odd sections, and within 15 miles of the Appellant's line of road, was determined by the Commissioner of the General Land Office to be swamp and overflowed, and to properly enure to the State under the swamp grant, and were consequently approved as such by the Secretary of the Interior, on the 25th of Feb., 1859.

See Record 36 *to* 40, *and* 61–2.

The lands thus approved have been duly patented to the State according to the Act of Sept. 28, 1850, but the balance (being the lands in odd numbered sections, and within

15 miles of the proposed line of said Railroad), were decided by the Commissioner to be dry, and not to come within the provisions of the swamp grant, and the claim of the State thereto, under said grant was formally rejected by the Commissioner on the 25th of October, 1861.

Record, pp. 34–5 *and* 59.

The swamp lands thus rejected were afterwards approved and certified to the State for the benefit of said Railroad, as a part of the land enuring to the State under the Act of 15th May, 1856, as the appellant's exhibits as well as Plaintiff's evidence, show.

APPELLEE'S ARGUMENT AND BRIEF.

If the selectiens and return were sufficient as to a part of these lands, why not as to all? If the evidence was sufficient as to the *even sections*, why not as to the *odd?* What right had the Commissioner to make this peculiar discrimination in favor of the railroad? All these lands stood before him on the same evidence. All were swamp or none, and all should have been approved as such, or all rejected; and the fact that a part of them were approved is evidence that all should have been. The Surveyor General in his decisions made no such distinction, but pronounced *all alike*, swamp and overflowed lands.

It may reasonably be doubted whether, after submitting the question to the Surveyor General for his decision, and after taking his decision according to his instructions, the Commissioner has the right to overrule or reverse it as he did in this case. The acts of such public officers are not conclusive where they affect private rights, but generally they are conclusive and binding on the Government.

The Commissioner says that these "tracts having been brought to the test of the official field notes and other data as required by the decision of the Secretary of the Interior of the 8th of February, 1860, were found not to be swamp, and accordingly were rejected," &c., (Rec., 34 and 591).

Before proceeding to the main points let us see if that decision of the Secretary required the rejection of these lands from the list. He says:

"SIR:—In reply to your communication of the 4th and report of the 21st ultimo, relative to swamp selections in Louisiana which conflict with railroad grants, I have to state that it appears to me that my decision of the 23d of July last furnishes a rule for the action of your office in cases of conflict wherein the swamp selections had been made and reported to your office prior to the 3d of March, 1857.

It is true that in my letter of the 28th August, 1858, I approved the suspension of action upon cases of conflict in Louisiana where lands that had been embraced in swamp lists that were on file on the 3d March, 1857, were found also to lie within railroad grants, which had vested prior to that date, until the General Land Office could determine whether such lands ought to be certified to the State under the railroad grant of 3d June, 1856, or the swamp grant.

"This may have been regarded as looking to an investigation into the question of the swampy or dry condition of the land on the 28th of September, 1850, or the 2d March, 1249, but as case after case arose, and delay in carrying out the conflicting grants appeared to threaten greater evils than those likely to arise from mistakes, in my letter of the 23d July last I informed you in substance, in reference to swamp selections on your files on the 3d March, 1857, that if a title under the railroad grant had not vested prior to that date, my opinion was that Congress, by the act of that date, had decided that the title should pass under the swamp grant. On the other hand, if the title under the railroad grant had vested prior to that date, the Land Office might proceed to decide as to the swampy character of the land upon the field notes of the surveys and the papers on file and of record on the 3d March, and if the claim of the State under the older grant was satisfactorily established, to affirm the title under that grant; but if the swamp claim was not satisfactorily sustained, to certify the title under the railroad grant."

See certified copies Rec. 410, *and* 62, 63.

On what grounds could the Commissioner bring these tracts "to the test of the field notes and other data" under this decision? Only on the ground that the swamp land selections were not returned to the General Land Office prior to March 3d, 1857, or that the title to the lands had vested under the Railroad grant prior to that date.

The swamp selections *were returned to said office prior to that day*, as we have before seen, and the Commissioner was fully advised of that fact; and it will be seen from the certificate of the Commissioner himself, attached to the map or plat of said Railroad appended to and submitted with the Record in this case, that the map or plat on which is delineated the line of said road, as finally established and adopted by the Company, was not filed in his office until April 6th, 1857, while the certificate of the President and Secretary of the Company, attached to said map or plat, shows that said line was finally adopted by the Board of Directors on the 24th of *March*, 1857.

See also the Resolutions of the Board, certified to by their present Secretary, Record, p. 96*; and the depositions of N. Lathrop, p.* 188, *J. Solomon, p.* 110*; and D. H. Solomon, pp.* 111, 112.

No title or right whatever to any of these lands under the Railroad grant, could attach (as we shall hereinafter see) until the line of road was *definitily fixed;* and of this the

Commissioner himself was careful to notify the State by his letter of August 20th, 1856.

Record, 98, 99.

Now, to pretend that the line of road was *definitely fixed*, or that any rights had vested under the Railroad grant prior to March 3d, 1857, exhibits in the Commissioner ignorance of the law, or of the business and rulings of his Department, quite inexcusable.

The line of road was not fixed, and no rights had vested under the Railroad grant prior to 3d March, 1857; and the swamp selections were at that date on file in the General Land Office. Instead, therefore, of the action of the Commissioner in rejecting these lands under the swamp grant, being in accordance with the said decision of the Secretary of the Interior, it is in *direct conflict with it*, contrary to the previous rulings of the Department, and in violation of law and the rights of the State under the swamp grant. Hence this suit.

The first legal proposition I submit is this:

I. *That the act of September 28th*, 1850, *of its own force and unconditionally passed to the State of Iowa all the right and title of the United States in and to all these lands that were of the character contemplated by that act—that is, all that were actually "swamp or overflowed lands" at the date of the passage of the act.*

The language of the act is, after stating the object of the grant, "The whole of those swamp and overflowed lands, made unfit thereby for cultivation, which shall remain unsold at the passage of this act, *shall be and the same are hereby granted* to said State."

In the case of *Godfrey* v. *Beardsley*, 2 McLean, 412, the question arose upon the construction of the *treaty* under which title to certain land was claimed. The language used was, "*There shall be granted by the United States to* *each of the following persons*," &c. It was contended that these words did not constitute a grant so as to pass the title, but that a patent was necessary. But the court, after remarking that "a legislative grant requires no further evidence of title," held that the *treaty* was a *law*, and that by it the fee passed, and that no patent or act of Congress was necessary, (see p. 416–7–8). In the case of *Lessieur et al.* v. *Pierce*, 12 How., 60, the Supreme Court of the United States, in construing the act of 6th March, 1820, making a grant to Missouri in the words, "That four entire sections of land *be and the same are hereby granted* to the said State," held that it was a *present grant*, wanting identity to make it perfect, and that "it vested the title in the State of Missouri of four sections."

The same is held in 2 Wheat., 196.

The same point is established in *U. S.* v. *Brooks*, 10 How., 460, in construing the treaty under which the title was claimed.

The language used in the act making the *swamp grant* is stronger, and more clearly denotes a *present grant* than the words used in any of the laws or treaties above referred to. Not only so, but this act is a grant of all lands of a *particular*, *specified character;* it needed no subsequent action to give it identity, but applied at once to all the *swamp* and *overflowed* lands.

Soon after the passage of this grant, to-wit: on the 21st of November, 1850, the Commissioner of the General Land Office, Mr. Butterfield, in his circular of instructions to the local land offices, says: "*This act*" (of Sept. 28, 1850), "*clearly and unequivocally grants to the several States those lands which, from being swampy or subject to overflow, are unfit for cultivation.* In this class is included also all lands which, though dry part of the year, are subject to inundation at the planting, growing, or harvesting season, so as to destroy the crop, and therefore are unfit for cultivation;

taking the average of the seasons for a reasonable number of years as the rule of determination."

Lester's Land Laws, p. 543.

Although Mr. Stewart, the succeeding Commissioner, at one time held otherwise, he reviewed the subject, and on the 23d of December, 1851, reversed his opinion, and held the act to be a *present grant.* He says "the words employed, viz: 'are hereby granted,' seem to me to import a grant *in presenti.* They confer the *right* to the land, though other proceedings are necessary to perfect the title. When the selections are made and approved, or the patent issued, the title therefore becomes perfect, and has relation back to the date of the grant."

Lester's Land Laws, p. 549.

And this construction has been acquiesced in and recognized by the Interior Department ever since. I am not aware of a single deviation, except in the interest of Railroad Companies.

But these are not all the authorities which sustain our construction of this grant.

Attorney General Black, in his opinion of June 7, 1857, to the Secretary of the Interior, construing the act of Feb. 3, 1853, granting lands to Missouri and Arkansas for Railroad purposes, says: "This act vests the fee-simple in the States to which the lands are given. A legislative grant by Congress does, of itself, *proprio vigore*, pass to the grantee all the estate which the United States had in the subject matter of the grant, except what is expressly excepted. This principle has often been ruled in the Courts, as you will see by reference to the following cases." And after referring to *United States* v. *Perchman*, 7 *Peter* 51; *Mitchell* v. *United States*, 9 *Peters*, 711; *United States* v. *Brooks*, 10 *How.* 442; *Leuner* v. *Price*, 12 *How.* 59; *Lagina* v. *Rowland*, 2 *How.* 581; and *Godfrey* v. *Bradley* 2

McLean 412, the learned Attorney General goes on to say: "The point is firmly settled, if the highest judicial authority can settle anything; and even if there had been no decision of it, I should think it too plain, on original principles, to admit of a doubt. When Congress says that a certain portion of the public domain of the United States "is hereby granted" to a State, what need can there be of any further assurance, in order to give the State a perfect title in fee?"

Lester's Land Laws p. 525.

The *Attorney General*, in his opinion of Nov. 10, 1858, in construing this swamp grant, and deciding the conflict between it and the Railroad grant of 1853, to Missouri, again declared it to be a *present grant.*

Lesters Land Laws, p. 564.

This last opinion was rendered in a case precisely similar to the one at bar—on the identical points raised in this—and is so appropriate, and such an able and complete vindication of our position, and of the right of the State under the swamp grant, that I insert it in full.

ATTORNEY GENERAL'S OFFICE,
November 10, 1858.

SIR:—By the act of September 28, 1850, Congress granted to the State of Arkansas all the swamp and overflowed lands rendered unfit for cultivation within her limits, for certain purposes mentioned in the act. On the 3d of October, 1856, the Surveyor General made a report, which was filed in the General Land Office, designating the overflowed lands which had been selected under the grant. On the 9th February, 1853, Congress made another grant to the States of Arkansas and Missouri, to aid in the construction of a railroad, and under this grant a part of the lands previously granted to the State of Arkansas under the denomination of swamp lands, was included, and is now claimed for the use of the railroad.

The question upon which you ask my advice requires a comparison of the two laws and the acts done under them, so as to ascertain which of these is the better title. Does the State take it under the first grant, or was that grant so imperfect that the subsequent disposition of it by Congress passes the right to the latter grantee?

Where there is a conflict between two titles derived from the same source, either of which would be good if the other were out of the way, the elder one must always prevail, *prior in tempore, prior est injure.*

This difficulty, therefore, is solved if the mere grant, as you call it, gave the State a right to the land from the day of its date. That it did so, there can be no doubt. In an opinion I sent you on the 7th of June, 1857, concerning one of the same laws now under consideration, I said that a grant from Congress does of itself, *proprio vigore*, pass to the grantee all the estate which the United States had in the subject matter of the grant, except what is expressly excepted. I refer you to that opinion for the reasons and authorities upon which the principle is grounded. It is not necessary that the patent should issue before the title vests in the State under the act of 1850. The act of Congress was itself a present grant, wanting nothing but a definition of boundaries to make it perfect, and to obtain that object the Secretary of the Interior was directed to make out an accurate list and plat of the lands, and cause a patent to be issued therefor. But where a party is authorized to demand a patent for land, his title is vested as much as if he had the patent itself, which is but the evidence of his title.

The authority given to the State Legislature to dispose of the lands upon the patent does not make the grantee less the exclusive owner of them than she would be if these words were omitted. The object of that clause undoubtedly was to prevent the Legislature of the State from a premature interference with the lands, before they were so designated, as to preclude mistake and confusion.

The subsequent grant by Congress to the State for the use of the Railroad, could not have been intended to take away from the State the rights previously vested in her for other purposes. We are never to impute such intentions to the legislative departments, where any other construction can be given to the words of the statute. Even if we could suppose that to be the meaning of Congress in this case, it would avail nothing to the later grantee, since in all cases of conveyance, a later grant must yield to an earlier. It has often happened that public grants, by mistake, have been so described in general words, that when they come to be located, they are found to lie afoul of each other. I believe it has never been thought that where this happens, they are not to be treated like inconsistent deeds made by private persons. There are cases in which grants are made under descriptions so vague and indefinite that neither the grantee nor any other person can tell their location or boundaries, until the grantor does some act which locates and defines them. In such case, if another right strictly defined intervenes, the first grantee may lose what he would have been entitled to, if his own grant had been descriptive and definite.

But that principle does not apply here, because the general description of all swamp and overflowed lands within the limits of Arkansas is definite enough for purposes of notices Besides, the grant for the Railroad was originally more indefinite than the other, requiring the location of the road to be made before the locality of the land could be known at all. The State, therefore, has the oldest and the most definite title, and its lands were accurately located, and their boundaries particularly defined agreeably to the Act of Congress, before the same thing was done by the other claimants. The oldest title, the most definite, and the first location, will give her priority and preference over another grantee subsequent in title less definite in the terms of the grant, and later in location.

I am, very respectfully, &c.,

J. S. BLACK,

Hon. Jacob Thompson,
Secretary of the Interior, Washington, D. C.

The Railroad grant to Missouri and Arkansas was made on the very same terms, and in the same language used in the grant of 16th May, 1856; and this opinion fits this case as well as the one in which it was delivered.

The swamp grant was made six years before the Railroad grant, and was more definite in description. Most of the land was selected and returned as swamp, some two years prior to the passage of the latter act; and all of it long before any right whatever had accrued under that grant.

Again. This point is very briefly and explicitly decided by the Supreme Court of Iowa in the case of *Allison v. Halfacre*, 11 Iowa, 450, in which the Court say: "The act granting the swamp lands operates *ex proprio vigore* to pass the title at once. The subsequent selection and patenting is required for the purpose of fixing their location and description." And they declare that the idea that the title does not vest by the act, but by the subsequent selection and patenting of the lands, "is simply a mistake."

This point may well be considered "firmly settled, if the highest judicial authority can settle anything."

Having thus parted with all her interest in the land, the government could have no further control over it. She could not sell or grant it again; cannot take it back, or in any respect control the appropriation or management of the land by the State. The title vested in the State *absolutely and unconditionally.* The act of 1856 could not affect it.

> *See, also, Arnold v. Grimes, et al.* 2 *Iowa* 16; *Dunklin County v. District Court, &c.*, 23 *Mo.* (2 *Jones*) 449; *Cooper v. Boberts*, 18 *How.* 173.

Now let us turn to the *Legislative* department and see how this act is considered, and what effect is given to it by Congress.

After the passage of the grant the ordinary disposition of the public lands continued; the lands covered by the grant were not listed or designated, and there was nothing to prevent them from being entered or located with land warrants the same as other lands, except the mere fact of their being wet land. A large portion of the lands entered of the government were taken without any examination, hence the character of the land did not prevent these subsequent sales. Under these circumstances the swamp and overflowed lands were being continually disposed of to private parties, at the local offices, by the government.

On this point the Commissioner of the General Land Office, in his communication to the Secretary of the Interior, of date October 11, 1861, says: "The ordinary system of selling and locating lands was of course in full operation, sweeping over the public domain; and under that system, individuals not discriminating and the local officers not having the data in the absence of selections to discriminate, it followed that thousand of sales and locations were made, which afterwards agents representing the swamp States claimed to be swamp lands of prior date, and State property in virtue of the assumed present grant, by the acts of 1849 and 1850, to those States."

The Commissioner continues: "The result was that the General Government was forced either to annul all such sales and locations or legislate a direct reversal of said decisions," (declaring the act a present grant,) "or provide other means of relief. Hence the indemnity act of March 2, 1855, was determined upon as the proper remedy, although prior to its passage many such sales and locations had fallen to the ground."*

The Government had no power to legislate a reversal of said decisions," but must do one of two things: either set aside all such sales and locations, and withdraw from market all the public lands till the swamp selections could be made to prevent further sales or affirm and legalize them by granting to the States compensation for the lands. Congress chose the latter course, and passed said act of March 2, 1855, entitled "An act for the relief of purchasers and locators of swamp and overflowed lands," providing for legalizing these sales and patenting the lands to the purchasers and locators, and paying over to the States, instead of the land, the consideration (or its equivalent) received therefor.

This act was passed, as declared in its title, *for the relief of these purchasers and locators.* Why did they need relief? Simply because the title or right to the land had passed to the State by the act of 1850; these subsequent sales and locations were therefore, illegal and void, and their title must fail. If the right to the land did not pass by the act of 1850—if it was not a *present grant*—these purchasers and locators would need no relief; their purchases were legal and their title would be good without any action on the part of Congress.

The passage of this act, therefore, fully recognizes the construction placed upon the act of 1850 by the other departments, and establishes the fact that in the opinion of Congress it passed to the States at once the right to all the swamp and overflowed lands.

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*This communication was written subsequently to the compilation of Land Laws and Regulations by Lester, and is therefore not in his work; but a printed copy will be found attached to this argument.

Again, at the time of the passage of the act of 1856, Congress thought, upon estimates from the General Land Office, that the lands granted would be about 1,500,000 acres; but we find certified to the State under it over 3,000,000 acres, which shows that lands have been certified which at the time were not thought subject to it.

All the swamp land selections in the railroad limits are included and constitute a considerable part of this addition.

Globe 1*st ses.* 34 *Cong. pp.* 1122 *and* 1172; *Register's Report*, (*Iowa State Land Office*) 1865, *p.* 109.

We have, then, the three departments of the govenment, executive, judicial, and legislative, all agreed in construing the act as a *present* grant.

Yet, notwithstanding these oft-repeated decisions of the highest judicial tribunals—in the face of this solemnly expressed opinion of Congress—contrary to the long established and well understood holding of the Interior Department—in total disregard of the above well considered and unanswerable opinions of the highest law-officer of the Government, and in direct violation of the instructions of his immediate superior, the Commissioner rejects the claim of the State under this grant, and lists and certifies the land under the act of 1856, for the benefit of the railroad; and then, with a complacency very remarkable, to say the least of it, informs us in his official certificates *that this act of his has vested the title* in the State under said act, for railroad purposes!

Having thus disposed of these lands, he arrogates to himself the privilege of passing upon the legality and effect of his own act, and coolly informs the State that she has no remedy.

In officially certifying to this legal, or rather *illegal*, conclusion, he would lighten the labor of the court by informing them that the matter is settled *by him* beyond the reach of *judicial power*.

Fortunately for the protection of private rights, as well as for the integrity and stability of our Government, our institutions are not so imperfect as to make such act conclusive, and that there are provided competent judicial tribunals, before which the illegal acts of executive officers, even of the *President himself*, may be reviewed.

The next question is one of fact, arising under the foregoing proposition of *law*, to-wit:

II. *Are these lands swamp and overflowed lands? Or, rather, were they such at the passage of the grant?*

A careful examination of the depositions taken on behalf of the county, in reference to this point, and found in the record, on pages from 203 to 245, will settle the question.

These depositions, properly taken on due and legal notice, the testimony of as good and reliable men as live in this or any other State, and who have been acquainted with this land, some of them *before* the passage of the grant, and all of them since about, or soon after, that time, prove the *greater part of each and every forty acre tract in controversy to be swamp and overflowed lands*, and that such must have been, and *actually was*, its character at the time of the passage of the act of Sept. 28, 1850. I solicit of the Court a careful perusal of these depositions. They serve not only to show the character of the land for the purposes of this suit, but also, to some extent, to disprove the charge of *fraud* in these selections under the swamp grant, so frequently made against the State; and also show how utterly unreliable are the data by which the Commissioner of the General Land Office assumes to adjust the claims of the State under it.

The Commissioner assumes to determine the character of the land by the field notes of the Government survey, and says that, "having been brought to that test, they were found not to be swamp," &c. (*Record p.* 34 *and* 59). From this decision we must infer that the field notes do not show the lands to be either swampy or overflowed; and yet the testimony of these witnesses proves that when the Government surveys were being made, in 1850–1, the Surveyors frequently had to travel over this land on the Missouri bottom in skiffs or canoes, and that a part of this land lies in Wabansa Lake, which has never yet been from under water, notwithstanding the draining done by the county.

See Record, 116 *to* 144.

If the field notes are oblivious to facts like these, how unjust to apply them as a test of the character of the land.

Some of these witnesses carried chain for the surveyors, while making the Government surveys, (*Rec.* 119 *and* 121), and one, at least, was with the selecting agent in making the swamp selections, and gives us the very fair and correct rules by which in making the selections, they determined the character of the land.

Record, 131–2.

From *one* to *ten* witnesses (besides the evidence of selecting officer) well acquainted with the land, have testified that each and every forty acre tract was, and is, swamp and overflowed land, within the meaning of the act of 1850, giving a full description of the character of the lands, and exhibiting a thorough knowledge of, and intimate acquaintance with, the lands for the last twelve to eighteen years.

This evidence is too overwhelming and conclusive to need comment, or to admit of a doubt.

This *fact*, then, under the *law*, establishes the county's right to every tract of land in controversy in this suit.

Here I might safely rest the case, but there are other points equally as conclusive and on which a decision is desired.

I therefore call the attention of the Court to the *second legal proposition*, to-wit:

III. *The Act of Congress of March* 3d, 1857, *confirm-*

ing the swamp land selections, perfected the right of the State to all the lands selected as swamp and overflowed under the act of 1850, *and at the date of said act of March* 3, 1857, *reported to the General Land Office, whether the land was wet or dry, unless in the meantime they had been otherwise legally disposed of.*

Or, in other words: *The act of March* 3, 1857, *perfected Appellee's right to all these lands, whether wet or dry, if they had been before that date reported to the General Land Office as swamp, unless the Appellant had in the meantime acquired legally "vested rights" therein.*

This conformatory act is entitled "An act to confirm to the several States the swamp and overflowed lands selected under the act of September twenty-eight, eighteen hundred and fifty, and the act of the second March, eighteen hundred and forty-nine;" and it unconditionally confirms to the States all lands selected as swamp, and reported prior to that date to the Commissioner of the General Land Office, "so far as the same remained vacant and unappropriated, and not interfered with by an actual settlement under any existing law of the United States."

Lester's Land Laws, 285.

Prior to the passage of this act, the Interior Department allowed parties desiring to do so to contest the claim to any lands claimed as swamp, and to offer evidence to show that they were not of the character contemplated by the act of Sept. 28, 1850; (*see Lester's Land Laws*, 544, *and* 545 *to* 548;) but immediately after the passage of the confirmatory act, to-wit: on the 18th March, 1857, the Commissioner published a notice dismissing all such cases, and declaring that said act precluded the Department from investigating the character of the land, and that it confirmed to the States under the swamp grant, all lands selected and reported, not *legally* otherwise appropriated.

Lester's Land Laws, 549.

This view of the act of 1857 is affirmed, declared and reiterated by the Secretary of the Interior, in his communications to the Commissioner, of date Jan. 8, 1858, Nov. 1, 1858, and July 23, 1859.

Lester's Land Laws, 558, 563, 570.

This, then, is the well settled construction of the act; none other could reasonably be given it.

These selections were made by an agent appointed by the County Court, as provided in the act of the General Assembly, passed Jan. 13, 1853, (Rev. 1860, p. 148), and duly reported by him as required in said act, as the testimony clearly shows.

If it is objected that the State had no right to make or thus authorize these selections, I would call attention to the fact that while the act of Congress of Sept. 28, 1850, requires the Secretary of the Interior to "make out accurate lists of the swamp lands," &c., it does not describe the means he shall employ to ascertain what lands are swamp. It is left with him to select the mode by which to accomplish that end. "In adopting a basis upon which the lands of this class should be ascertained, the State authorities were requested to indicate a method of selection which they would adopt in adjusting the grant," and the Commissioner, in his circular to the local land offices, dated Nov. 21, 1850, submitted two methods, to-wit: first, the field notes of the government surveys; and second, if the State authorities are not willing to accept the field notes as the basis, they might proceed to make examination of the land by agents appointed for that purpose.

Only two of the States, (Michigan and Wisconsin), agreed to accept the first method; all the others, Iowa included, "agreed to ascertain the land by examination in the field."

See Lester's Land Laws, pp. 542 *and* 553; *also* 522.

There is nothing in the grant forbidding the adoption of this method. The United States, through the Interior Department, proposed it, and the State accepted it. The Department issued the instructions under which the State Agents were to make the selections. They were made and reported in strict accordance with these instructions, (see *Lester's Land Laws*, 522), and also with the State laws. Not only so, but the manner in which these selections were made was subsequently recognized, ratified and affirmed by both the United States and the State of Iowa; by the former in the reception of the lists of selections including these lands, recognizing them as legally made, and patenting a large portion of the lands to the State, making no objection at any time, not even as a reason for, nor at the time of, rejecting these tracts, to the manner in which the lands were selected and reported; and by the latter by joint resolutions of her General Assembly, approved April 7, 1862, (Acts 1862, p. 248). These resolutions expressly ratify these very selections, repudiate the claim under the railroad grant as illegal and without the authority of the State, and assert the determination to claim the lands only under the swamp grant. No objection therefore could now be made as to the manner of these selections.

Even if the selection by the State had been without authority of law, the question could not now be raised, for the reason that Congress, by the act of 3d March, 1857, ratified and confirmed the selections, as made and reported.

In the case of *United States v. Arrendona* 6 *Peters* 713, the Supreme Court of the United States states the effect of such a cofirmation as follows: " Where Congress have, by confirming the reports of Commissioners, or other tribunals, sanctioned the rules and principles on which they are founded, *it is a legislative affirmance of the construction put by these tribunals on the laws conferring the authority and prescribing the rules by which it should be exercised;* or, which is to all intents and purposes of the same effect in law, it is a legislative ratification of an act done without previous authority, *and this subsequent recognition and adoption is of the same force as if done by pre-existing power, and relates back to the act done.*"

Therefore no objection can be made, in this case, as to the manner in which the selections were made, or the authority of the State to make them.

The lands, as we have before seen, were selected and reported in two lists. The first was sworn to by the selecting officer, May 27, 1854, reported by the Surveyor General to the U. S. Land Office at Council Bluffs, and filed in that office Oct. 23, 1854, and was reported to, and filed in the General Land Office Sept. 27, 1854; and the second, sworn to March 20, 1856, was reported to and filed in the Land Office at Council Bluffs, Jan. 23, 1857, and reported to and filed in the General Land Office Jan. 21, 1857.

See *Record p.* 15 *to* 68.

These lands being thus selected and reported to the Commissioner of the General Land Office prior to the 3d of March, 1857, were, by the act of that date, confirmed to the State as swamp lands, unless the Defendant had vested rights therein at that time.

But no rights had vested in the Railroad Company, nor could any rights possibly accrue under the railroad grant for for the following reasons:

First—These lands had previously been selected as swamp, and were swamp lands, and the Government having parted with her right to them by the act of 1850, as before seen, they could not be subject to the railroad grant at all.

Second—These lands were selected and returned to the General Land Office as swamp lands, *and were, by order of the Interior Department, withdrawn from market and re-*

served from sale for the purpose of carrying out the act of 1850. They were not, therefore, subject to the railroad grant, and they were also expressly excepted therefrom by a provision in the grant itself.

That they were withdrawn from market and reserved for the purpose of satisfying the swamp grant, see the certificates of the Register of the Land Office at Council Bluffs, with copies of the Commissioners's letter in evidence, (Record, pp. 51–2 and 57–8 and 97–8). Also the deposition of Frank Street in evidence in the Mills County case. (Case 180—Rec. 67–8).

This order of the Commissioner and the entries on the books and maps of the Land Office withholding the land from sale, were in full force on the 15th of May, 1856, when the railroad grant was made, and also at the time of the location of the line of road and its adoption, and constituted an "appropriation" of these lands for the specific purpose of satisfying the grant of 1850, and being so "appropriated" they did not and could not pass by the act of 1856.

The term "appropriated," as applied to land, has been defined by the Supreme Court of the United States. In the case of *Wilcox* v. *Jackson*, 13 Pet. 498, the Court said, "An appropriation" of land "*is nothing more nor less than setting apart the thing for a particular use.*" In the same case the court also said, "Whenever a tract of land shall have been once legally appropriated to any purpose, from that moment the land thus appropriated becomes severed from the mass of public lands; and no subsequent law, proclamation or sale *would be construed to embrace it or operate upon it, although no reservation was made of it.*"

In *Chotard* v. *Pope*, 12 *Wheaton*, 586, the Court speak of lands as having been "appropriated" by *being withdrawn from the mass of lands offered for sale.*" The Court say, "The right to enter is identified with the right to purchase at private sale, and confined to the appropriating of such lands as may be legally appropriated by entry at the Register's Office, from which are excluded all lands previously appropriated, whether by public sale, or *by being withdrawn from the mass of land offered for sale.* From the earliest date of the legislation of Congress on this subject, there have been appropriations to the public use made *by withdrawing from this mass* certain portions of territory for public seminaries, towns, salt springs, mines, and other objects, &c.

It is thus seen that *withdrawing land from sale for a specific purpose is an appropriation of them.* These lands were then "otherwise appropriated," and therefore not subject to the act of 1856. This doctrine is fully recognized and acted on by the Secretary of the Interior, in his decision of Nov. 20, 1855, (*Lester's Land Laws*, 521), in a case of conflicting claims under the swamp grant, and the railroad grant to Illinois for the Mobile and Chicago Railroad. In that case the railroad grant was passed on the 20th September, 1850, (*Lester's Land Laws*, 160). On the passage of that act a *reservation* was made of all the lands lying within fifteen miles on either side of the supposed line of road, for the purpose of satisfying said act. Afterwards, to-wit: on the 28th of the same month, and while the order reserving said lands from sale was still in force, the *swamp* grant was passed.

The State of Illinois subsequently claimed, under the latter act, the swamp lands lying within the reserved limits. But the Secretary decided that the State could have no rights under that act to any of the lands thus reserved; not to the even sections, because they were granted for the railroad, and not to the odd sections, becouse they were reserved to be sold at the double minimum price to re-imburse the United States, and prevent loss to the treasury by reason of the grant. Thus all the lands so *reserved from sale* were held to be beyond the reach of the subsequent act, and not in any manner subject to it. The difference between that case and this, is, that in that, the reservation was made in the interest of railroads, while in this, it was not.

It seems, however, no very uncommon thing, nor difficult matter, for the Department to change its rules of construction when that particular interest is involved. In the decision of the Secretary, of Jan. 8, 1858, above referred to, it was expressly held that the act of March 3, 1857, confirmed to the State all lands selected and reported as swamp, and that the Department had no longer any power to investigate the character of the land, or receive any proof in reference to it. And all the cases pending at the time of the passage of that act, wherein *individuals* claimed the privilege of entering land selected under the act of 1850, upon the ground that it was not swamp, as contemplated by that, act was accordingly dismissed.

Thousands of these cases have been commenced under the Commissioner's instructions of Dec. 21, 1855, (*Lester's Lane Laws*, 544–5), and during their pendency the act of March 3, 1857, was passed. The Secretary considered that Congress by that act stepped in and confirmed the claim of ~~one~~ of the parties, and left him no power in the premises but to obey the law and patent the lands.

But the railroad claims come up, involving the same questions, and a different rule prevails! And although they had no rights whatever at the passage of the act of March 3, 1857, the Commissioner goes into an investigation of the character of the lands, determines it by the field notes, and rejects the claim under the act of 1850, because the land does not appear by that test to be swamp!

The effect of the withdrawal and reservation in this case, as we have above seen, was to exclude them entirely from the operation of the railroad grant.

We might go farther, and say that the effect would have been the same, although the lands had been *illegally selected* or if they were not *swamp* and *overflowed* lands, and consequently not such as were contemplated by the act of 1850. It is the *fact of reservation* or *withdrawal from sale*, by competent authority, (that is, by the officer in charge of the Land Department), that produces the result, regardless of the legality or illegality of the acts which led to such reservation or withdrawal.

In *Hoofnagle* v. *Anderson*, 7 *Wheaton*, 212, the Court said, " A patent appropriates the land it covers: and that land, being no longer vacant, is no longer subject to location. If the patent has been issued irregularly, the Government may provide means for repealing it, but no individual has a right to annul it, to consider the land as still vacant, and to appropriate it to himself."

So a "survey" has been held to appropriate the land it covers, without reference to the question whether it was or was not legally made.

In *Jackson* v. *Clark et al.*, 1 *Pet.* 628, the question arose upon the construction of the act of Congress which provided that " No location shall be made on tracts of land for which patents had previously been issued, or which had previously been surveyed." In that case one party relied upon the fact that the land had been "surveyed" before the location made by the other party, but the *effect* of the same was attempted to be avoided upon the ground that the "survey" was *illegal*, being based upon warrants which had been previously satisfied. But the Court said:

" A survey made by the proper officer, professing to be made on real warrants, bearing upon its face every mark of regularity and validity, presented a barrier to the approach of the location which he was not permitted to pass; *which he was not at liberty to examine.*" * * " *The illegality of the survey would not be examined by him.*"

In addition to the above authorities, I refer to the following official opinions of the different Attorney Generals of the United States, as to the effect of "reservation" under various circumstances.

OPINIONS OF ATTORNEY GENERALS.

Vol. III, p. 650. In this case Congress granted to Ohio for the purpose of aiding in extending the Miami Canal, a quantity of land on each side and within five miles of said canal, specifying the mode of selecting, &c. The route of the canal not being then located, the Land Office "reserved" all the land that it supposed might be covered by the grant. After the land was located, it appeared that the lands thus reserved *exceeded the quantity granted to the State*, and that *part of what had been reserved was without the limits of the grant, and more than five miles from the canal.* Governor Shannon entered and claimed to purchase some of the lands thus reserved, but which *were outside of the limits of the grant. Attorney General Crittenden* held that he was not entitled to a patent—that the land having been *reserved* (ALTHOUGH OUTSIDE OF ANY REAL GRANT) could not be sold *until the reservation had been removed, and the land again advertised publicly for thirty days as being for sale.*

In same volume, pp. 274 and 277, *Attorney General Butler* held the same doctrine in analagous cases; also, that the President might lawfully *reserve* lands from sale.

Vol. VIII, p. 16, case of *Faust* v. *Faust:*

There was a contested grant of Maison Rouge, in Louisiana. In 1855, the Supreme Court of the United States decided against the claim, holding that the land belonged to the United States. *Before the decision was made*, a person entered into possession of some of the land, and *after the decision*, claimed the right to take it under the pre-emption laws, by virtue of his former entry. But *Attorney General Cushing* held that the land was "*reserved*," *until* *after the decision was made, and could not be entered prior to that time.*

Vol. VI., p. 670. *Rock Island Reservation:*

In this case Rock Island had once been "*reserved*" by the Land Office, for military purposes. Afterwards, the War Department determined that it was no longer needed for that purpose, so notified the land office, and requested that it might be sold. No action was had on this request. In 1852 Congress granted to all railroad companies the right of way, and the right to take lands for stations and depot grounds, from the public lands. The Rock Island Railroad Company selected grounds on Rock Island; but *Attorney General Cushing* held that it was *reserved*, and that the act of Congress did not give any right to take lands there *while it remained so reserved.*

The principle in all these cases is the same as that laid down by the United States Supreme Court, in 13 Pet. 498, above cited—that when any land is withdrawn from sale, or in any manner reserved by the Land Office, for *any purpose*, it is considered to be severed from the mass of public lands, and so appropriated that any subsequent *law, sale or grant*, is not construed to operate upon it, or relate to it althought it be not mentioned or expressly excepted in the act. And in exact harmony with the decision in *Chotard* v. *Pope*, 12 *Wheaton* 586, in which it is decided that although the terms of the grant be general, (as the act of May 15, 1856, which seems to apply to *all vacant* lands within the limits), yet the right granted is to be construed *as limited to that description of lands which are liable to be taken up at private sale.*

A grant in general terms, (not specifying the land by description or character), can affect only such land as was at the time of its passage subject to disposition through the usual channel, and in the usual modes (private entry or pre-emption). It is to be presumed that if Congress intended to include any other, they would refer to them specifically.

This principle, so well established, is decisive in this case. No one will contend that at the time of the passage of the railroad grant, these lands were subject to private entry in the usual manner. No one will deny their being *withdrawn from sale*, and *reserved* for the purpose of satisfying the grant of 1850, by the express order of the Commissioner of the General Land Office; and no one will claim that that *reservation* was, prior to the 3d of March, 1857, or has yet been removed.

But in addition to the general rule established by the decisions above referred to, we *insist* that these lands were excluded from the operations of the railroad grant by the direct terms and express provisions in the grant itself. Provision is made for indemnity in other lands for all tracts within the six mile limits, that would otherwise be subject to the grant, that shall be found, at the time of the final or *definite* location of the road, to have been otherwise disposed of or appropriated; thus directly recognizing in, and reserving to, the government the power to control these lands, and appropriate or dispose of them, either by the usual methods, or by Congressional action, up to the time of such definite location; and also securing, in the execution of the grant, the recognition and protection of rights acquired under the exercise of that power.

The lands in controversy were, as before seen, *otherwise appropriated*, and fully disposed of under the *swamp grant*, prior to the definite location of the line of road.

But in the act, it is "*provided further*, that any and all lands heretofore *reserved* to the United States by any act of Congress, *or for any other purpose whatsoever*, *be and the same are hereby reserved from the operations of this act*, except so far as it may be found necessary to locate the routes of said railroads through such reserved lands; in which case the right of way only shall be granted," &c. (*See last proviso, 1st sec*). This language is very broad, and fully covers this case. These lands were *reserved* to the United States for a *purpose*, to-wit: to satisfy the grant of 1850; and by *competent authority*, and according to the decision of the Supreme Court of the United States, in the case of *Wilcox* v. *Jackson*, 13 *Pet.* 498, and *Wolcott* v. *Des Moines Co.*, 5 *Wallace* 681, were utterly excluded from the operation of the railroad grant. (The last case was determined by this Honorable Court since this case was decided by the State Courts). These lands were as fully *reserved* to satisfy the grant of 1850, as were the Des Moines River lands to satisfy the grant of 1846, and were therefore (even if not swampy) as fully excluded by the proviso in the act of 1856. The decision in that case is conclusive on this point.

Third—The railroad grant, unlike the swamp grant, did not at the time of its passage attach to any *particular lands.*

It was a grant in the nature of a "float,"—a grant which could only attach to the unsold lands in odd sections, within a certain distance of a contemplated line. That line could have no *actual existence*, and therefore no *location*, till laid out and determined.

The location of the line determines the application of the grant to the particular tracts of land, and until that location is made it is *uncertain* and *wholly unknown* upon what tracts the grant will fall. Therefore, no right whatever can possibly attach, under this grant, to any particular tracts of land till the line of road is *definitely fixed.* (See the grant).

"Definitely fixed" means "permanently located"—fixed beyond the power of either party, State or General Government, to change it without the consent of the other. Simply surveying and staking the line "fixes nothing," and is not sufficient. The line thus surveyed and staked off must be adopted by the Board of Directors of the Company, and in addition to that, maps or plats of the line *thus adopted* must be filed as required by the acts of the Legislature and the rulings of the Interior Department; and such map or plat must be accepted by the officers of the Government as exhibiting the line of road as "definitely fixed." All this must be done before both parties are bound by the location; and untill it is *all* done the State (or appellant) may change the route without the consent of the United States; and while the line may thus be changed it is not "*definitely fixed.*" The following authorities fully sustain this position:

Attorney General Cushing's opinion of Dec. 19, 1856, *Lester's L. L.*, 512.

Attorney General Black's Opinion of June 7, 1857, *Lester's L. L.*, 525.

Secretary Thompson's decision of Aug. 5, 1858, *Lester's L. L.*, 530.

Secretary Thompson's decision of April 6, 1858, *Lester's L. L.*, 533.

Secretary Thompson's decision of April 21, 1859, *Lester's L. L.*, 537.

Secretary Thompson's decision of August 20, 1859, *Lester's L. L.*, 541.

Hud. & Del. Canal Co. v. N. Y. & Erie R. R. Co., 2 *American Railway Cases*, 585.

The map or plat of appellant's line of road, which it claimed was filed in the General Land Office in August 1856, was never accepted nor received by the United States as the map delineating said line of road, because it did not show said line as "definitely fixed." It was made on a temporary or merely preliminary survey, and "fixed nothing;" hence it was rejected by the Department.

See deposition of N. Lathrop, Rec. p. 107–9, *and letter from Commissioner to Secretary of State, Rec.* 98–9.

The line, as it was afterwards surveyed and as it is claimed to have been "staked off," was not adopted by the Directors of said Railroad Company till the *24th day of March*, 1857, twenty-one days after the passage of the act of March 3d, confirming the selections as swamp.

See copy of the resolution of said Board adopting said line, Rec. 99, *also, a copy of the record of said Board in evidence by the appellant.*

These certificates and the testimony of N. Lathrop, J. Solomon, D. H. Solomon, Wm. Street, and H. C. Watkins, (Rec. p. 107 to 114), show that the line was not adopted by the Board till the *24th March*, 1857, and that up to that time the Company did not consider the line fixed, but was surveying other and different routes and soliciting competition along them. It cannot, with any degree of reason, be claimed that the line was "definitely fixed" until it was *acted on and adopted by the Board.* Until that was done it was uncertain where the location would finally be made.

This map, on which is delineated the line of road as finally established, was not filed in the General Land Office till the 6th of April, 1857. Under the case in 2 *American Railway Cases*, above cited, this filing and the acceptance of the map is indispensible to the *definite and final location.* Up to that time the company could have changed the line; therefore it was not definitely fixed, and hence up to that time, (April 6, 1857), no rights under the grant could attach to any particular tract of land.

But whether it be so considered in this case or not, it cannot reasonably be contended or for a moment held that the line was "definitely fixed" before it was acted on and adopted by the Board, and while the Company was surveying other and different routes, and soliciting donations and subscriptions along each on condition of the final location on such different lines.

The testimony of L. Lingenfelter, A. Leitch, and John Hiatt establishes the fact that in the winter of 1857, to-wit: in the early part of 1857, the engineers of the company surveyed a route, leaving the line as finally adopted at Red Oak junction, and running through Fremont County to Nebraska City; and that at a public meeting, called at the instance of the officers of the Company, and also privately, the citizens of that county were assured that if they subscribed and donated more than Mills County, they *would get the road on that line*; and that many of them did subscribe and pay their money on condition that if that line was finally adopted by the Board, the subscription should be a donation to the Company, but if they adopted the line through Mills County, they should have stock in the Company to the amount of their subscriptions; and that after the final location, by the action of the Board in the spring of 1857, certificates of stock were issued to them for the amount paid. I would call particular attention to this testimony, (Rec., 103–4–5).

The Board did not select which one of these routes to adopt, nor did they adopt any till March 24, 1857. Till then, no right could attach to any lands under the grant. Hence the appellant had no rights whatever in any of these lands.

Fourth—The lands in controversy in this suit, are all outside of the six mile limits of the line of said railroad, as will fully appear from the lists put in evidence by the appellant.

Lands beyond the six mile limit can only be taken to make up the deficiency found to exist within that limit.

That deficiency must be ascertained before it can be supplied, and it cannot be ascertained until the line of road is finally located; for, until then, it is uncertain where the line will fall, and consequently uncertain what lands will be included within that limit.

The first step towards acquiring any rights under the railroad grant, to any particular lands, is the establishment or *definite location* of the line of road. That fixes the grant on all unappropriated lands in odd sections within six miles of that line.

The next is, to ascertain the amount of deficiency within that limit. This being done, the next step is to select, by an agent appointed for that special purpose, as required by the grant, unappropriated lands in odd sections between the six and fifteen mile limits, to make up that deficiency. And until this is *all* done, I undertake ,to say that the appellant can acquire no legal right whatever to an acre of land beyond the six mile limits.

1st—The line of road must be established by being, as the grant requires, "definitely fixed."

3d—The deficiency in the six mile limit must be ascertained; and

3d—The selection of lands from the fifteen mile limits to supply that deficiency, must be legally made before any rights can be acquired under this grant to such lands beyond the six mile limits.

Now, what kind of selection did the appellant make of these lands? On the 4th of Sept., 1856, (long before the location of the road,) Mr. Henn claiming to be an agent, wrote a letter from Chicago, Ills., to the Commissioner of the General Land Office, claiming to select *at once, and altogether*, not only all the unsold lands in odd sections between the six and fifteen mile limits along said road, but all said lands between said limits, *along all four of the proposed railroads entirely across this State!*

Copy of said letter in evidence, Record, 99.

This was no selection at all, much less a legal selection. The roads were not located, and hence lands could not then be selected. No list or description of the lands is given. It is simply a claim by wholesale to large amounts of land, without any certainty whatever as to how much it covered, or how much was needed; where it might fall, or what lands it might affect.

Such selections could not be made in advance, and if they could, such wholesale, indefinite, and uncertain selections could not be tolerated.

This view is in accordance with, and is sustained by, the opinions of *Attorney General Cushing*, of Dec. 19, 1856, and *Attorney General Black*, of June 7, 1857.

Lester's Land Laws, 513 *and* 525.

If this selection was authorized by law; if it had legal force, or vitality, when it was made, it would be good against any subsequent disposition of the lands by Congress; no entry, location, or appropriation of any kind could be maintained against it; and as the lines of the several roads, and of the appellant in particular, was not located, the effect would be to deprive the United States of all control of the lands in odd sections, not only along a certain line, or four certain lines, but anywhere and everywhere, along *every possible line* in the State, as it could not be known then where the lines would eventually fall.

The right must attach to land in the six mile limits, before it can to that beyond, or in the fifteen mile limits.

This idea that such selection could have any force or effect prior to the location of the road, is too absurd to require comment. If it had no vitality when made, when did it become vitalized? What gave it life? It certainly could not acquire any force whatever before the road was located, and whether it be contended that that event, or the subsequent act of the Commissioner in listing the lands, legalized the selection, it matters not in this case, as both came too late to give the appellant any right in these lands, as both are subsequent to the passage of the confirmatory act.

There never has been, even up to the present, any legal selection of these lands under the railroad grant; and *there certainly was not prior to the 3d of March*, 1857. Hence, the company could not have any rights therein.

For these several reasons, then, the railroad company had not, and *could not possibly have had*, on the 3d of March, 1857, any "vested rights," or rights of any kind, in these lands.

They were therefore, by the act of that date, confirmed to the State as *swamp lands*; and the acts of the Commissioner of the General Land Office and Secretary of the Interior, in rejecting them as such, and certifying and approving them under the railroad grant, were without authority of law, and in direct violation of the rights of the State and her grantees, under the act of Sept. 28, 1850.

III. "Where there is a conflict between two titles derived from the same source, either of which would be good if the other were out of the way, *the elder one must always prevail, prior in tempore, prior est in jure.*"

Attorney General Black's opinion of Nov. 10, 1858, (*p.* 12 *to* 14, *ante.*)

This principle is applicable and *decisive* in this case. Both parties claim title from the same source. But for the appellant, the title of the appellee could not be even questioned, while with the title under the swamp grant out of the way, the claim under the railroad grant would doubtless become good. The swamp grant was passed six years before the railroad grant. The selection of the lands under the former act was made years before the definite location of the road, or even the passage of the latter grant; then the confirmatory act of March 3, 1857, was passed before the definite location of the road, and long before the listing and certifying of any of the lands under the railroad grant. Applying the doctrine of *relation*, the right perfected by the act of March 3, 1857, reaches back and gives perfect title from the date of the swamp grant, cutting off entirely appellant's claim.

Where the act of 1850 appropriates land, as in this case, and a subsequent appropriation to another object is made in the act of 1856, which in its general terms might cover the same land, it could not reasonably be contended that the last *appropriation* has priority over the first, any way. But the saving and restricting provisions in the act of 1856 leave no room for argument.

In addition to the foregoing *decisive points*, (either of which is amply sufficient to determine this case), I would call attention to the following facts and points touching the rights of the parties:

1. The *State* is the trustee of the railroad grant, and has the right to control its appropriation.

The grant is made to the State. No railroad company is mentioned or referred to in the act, and in administering the grant the United States have dealt exclusively with the State. All lists of lands are certified to the State by the department. The railroad company is not known in the transaction on the records of the department as a party or beneficiary of the grant. Even the appellant's certified lists in evidence, which, it is claimed, are as good as patents conveying title to the railroad company, are made to the *State* and not to the *Company*. The Company is not recognized or referred to in them in any manner. They are simply *copies* of the original list approving the lands to the State, furnished by the department at appellant's request, as Attorney General Black held might be done;

"but," he very correctly remarks, "such lists can have no influence on the title of the State."

See Lester's Land Laws, 525; *also*, 540; *the grant itself, and defendant's lists in evidence.*

These lists give no title whatever to the railroad company. They can have no rights except through the grant to them by the State; and this grant, when accepted, became a *contract* between the State and Company. This matter is very clearly stated and fully decided in *The State of Iowa, ex. rel., &c.* v. *Kirkwood*, 14 *Iowa*, 162; see also, 6 *Cranch*, 136. This grant must be enforced and carried out, as a contract, as understood by the parties. *Field* v. *Schricker et al.*, 14 *Iowa*, 119. And if considered as a statute only, it must be construed and enforced as intended by the Legislature.

7 *Iowa*, 246 *and* 275; 14 *Iowa*, 218.

It was not the understanding or intention or the Legislature or the railroad company when they accepted it, that this grant should include any lands claimed as swamp under the grant of 1859. The joint resolution of the Legislature, approved April 7, 1862, settles this point so far as the State is concerned.—(Acts 1862, p. 248).

This resolution expressly repudiates this claim under the railroad grant, and declares that the State claims these lands only under the swamp grant.

The testimony of N. Lathrop, (Rec. 108–9), at the time one of the Directors of the Burlington and Missouri River Railroad Company, shows that he was one of a committee sent by that company to Iowa City, at the time of the passage of the act, for the purpose of accepting the grant, &c., and that it was not then the expectation of the Company to claim or receive under the grant any of the lands selected and claimed as swamp.

He also testifies that such was never the intention or expectation of the company while officered and controlled by Iowa men, but that when the control of the road passed into the hands of Eastern men, (which it did in 1857), this claim was made. The testimony shows, also, that the board sent a committee through the counties to solicit a donation or subscription of the swamp lands, and that they *did actually solicit these very lands of Fremont county*, as they also did the swamp lands of Mills and many other counties.

Hence this claim under the railroad grant was an *afterthought.* Such a claim was not intended, expected, or anticipated by either the company or legislature at the time of making and accepting the grant.

It is thus shown that the letter of Bernhart Henn, claiming all unsold land in odd sections, between the six and fifteen mile limits, had no reference to these lands, and should not operate upon them, as they were evidently considered appropriated, and not subject to the grant.

2. The grant by the State to the railroad company can be considered only as a conditional contract, to ripen into an absolute sale of the land as fast as, under the act of Congress, the State would have the power to sell them, which could not, in any event, be more than twenty miles in advance of the completed portion of the road.

By the act of Congress, the State is made a trustee for the purpose of executing the object of the grant. It is a well settled rule of law, that a trustee cannot delegate his trust. The State could not pass over to Defendant the entire subject of the grant, with all its rights and privileges, and thus divest herself of the control of it, and relieve herself from the responsibilities of a faithful execution of the trust. Such an act would be illegal and void, and in direct violation of the terms of the grant. The land can be disposed of "only in the manner" pointed out in the act.

14 *Iowa* 162.

Therefore, to give to the act of July 14, 1856, the construction contended for on behalf of the appellant would be to declare it void for want of power in the legislature to pass such an act.

An attempt by the State, under the grant, to transfer the title to nearly 3,000,000 acres of land to the railroad companies, by law, before any roads were "progressing" or in part "completed" would be wholly nugatory.

By the terms of the grant the State is authorized to sell a "quantity not exceeding 120 sections, and lying in a continuous line of twenty miles along said road;" and when the completion of twenty miles of road is certified to as required, "then another quantity hereby granted, not exceeding 120 sections, and lying in a continuous length of twenty miles along said road may be sold," and so on. (See Sec. 4 of the grant.)

The State can dispose of the land "only" in the manner pointed out; and the manner pointed out utterly precludes any sale or disposition of the lands in larger quantities than one hundred and twenty sections at one time, or for a greater length than twenty miles along the road, and it precludes any sale or disposition by the State of lands more than twenty miles in advance of the completion of the road. This is the plain, common sense meaning of the grant, and no other construction can be given without violating the act in letter and in spirit.

The grant is made with the obvious expectation on the part of Congress, that the State would dispose of the lands as pointed out, and use the proceeds to aid in making the road. She might build the road and keep the lands, or she might sell the lands to get the means to build it, or she might let the job of building the road, and appropriate the lands as so much to aid the enterprise, but in such case she could convey the title only as the road progressed, and in the manner designated in the grant. Let us refer to the act again:

The grant is made, as expressed in the title, to "aid in the construction of certain railroads;" in the act, it is expressed, "for the purpose of aiding in the construction of railroads," &c. It is a donation given to aid or assist in the construction of the roads, not to pay for roads already built, nor to pay for carrying the mail, nor for any other purpose but the one so plainly expressed.

The land is to be used as a means to help, as the work progresses.

The starting point is fixed at Burlington, on the Mississippi, and its termination on the Missouri river, at or near the mouth of the Platte. The work is to progress westwardly. It is to be built from east to west. Then, as the lands "shall be disposed of only as the work progresses," it follows as an inevitable consequence, that they can be applied only in the same order; that is, commencing on the east, and appropriating them westwardly with the construction of the road, (in divisions of twenty miles each), a distance equivalent to the length of road actually built. The order pointed out in the grant is this: 1st—And before any road is built, "a quantity of land not exceeding 120 sections, and included within a continuous length of twenty miles of said road may be sold;" and when twenty continuous miles of said road is completed, "then another quantity of land not exceeding 120 sections, and included in a continuous length of twenty miles along said road may be sold."

The "continuous length of twenty miles," as applied both in the construction of the road and the disposition of the land, must commence at the starting point, or east end of the road; at all events, both commence together, and run together in the same direction.

The quantity of land is determined by that "continuous length of twenty miles." The grant says "a quantity not exceeding 120 sections may be sold." It does not say one hundred and twenty sections, but not exceeding that amount. Why? Because 120 sections is the full amount lying in odd sections in the strip of six miles on each side for the distance of twenty miles in length. This, then, is the largest amount that could be received for that distance, and is what would be taken under the grant if none of the land had been disposed of by the Government.

It was known that the lands in the eastern part of the State were principally disposed of, and they were also more or less across the State.

Hence the term in the grant, " a quantity not exceeding 120 sections" and "included in a continuous length of twenty miles." The lands within the limits remaining vacant and unappropriated, within that continuous *twenty miles*, may be sold, whether the quantity be large or small. If the quantity be less than 120 sections, then lands may be selected from the tiers of sections nearest the road, outside of the six mile limits, to make up the deficit. But if the amount of 120 sections is not thus obtained within the *twenty continuous* miles, it cannot be made up elsewhere; for the "land can be disposed of only as the work progresses," and in the specified divisions of twenty continuous miles.

The idea that the company could take lands on the Missouri river for road built on the Mississippi—can take these lands in Fremont county to supply the deficiency found to exist along the road built in Des Moines or Henry, is so palpably unjust and unreasonable as to require but little attention. As well might the appellant claim the right to make up from the lands in the limits of the Dubuque and Pacific Railroad, the balance found wanting in the limits of this road. They are restricted from both in the same clause of the act.

In construing grants to States for improvement of rivers, roads, &c., the rule generally adopted is, that "the *extent of the improvement governs the extent of the grant.*" The Supreme Court applies this rule in 23 *Howard* 66, and held that the grant could not extend beyond the improvement to be aided by the grant, and hence limited the Des Moines River grant to the Raccoon fork. In that case the land in controversy was 60 miles from the improvement. In this case the land in controvesy lies about 200 miles beyond the completed portion of the road.

It is objected that this construction would give the Company no lands for building the road through a great part of the State, where the land had been disposed of by the Government.

That is true, and it never was intended otherwise. The public records of the country show that Congress so understood the grant at the time of its passage.

Mr. Bennett, chairman of the committee on Public Lands, reported this bill in the House, and on the discussion of the bill, said: "It confiues them to take the lands on the line of said roads; when each twenty miles is built, they must take the alternate sections within the twenty miles."

Cong. Globe 1*st ses.* 34 *Cong. p.* 1122.

On the discussion of the bill in the Senate, Mr. Yulee said: "The State will get no lands, except for roads which pass through the public domain."

Ibid p. 1168.

Senator Geyer said: "Under this bill the title to the land will not pass out of the United States until a certain quantity of road be constructed. The title to the land is to pass out of the United States only when twenty miles of road shall have been constructed, and so fast as the road is constructed."

Ibid p. 1172.

Senator Jones, of Iowa, said of the bill: "It provides for starting four roads from the Mississippi river, but neither of those roads will get any land until it approaches the center of the State. The intervening lands have already been sold, and the money for it is now in the coffers of the Government."

Ibid p. 1167.

The debate was engaged in by Senators Douglas, Cass, Seward, Crittenden, Wilson and others, and this construction was not objected to by any, but was accepted as the meaning of the bill. It was the understanding of Congress that this grant was to be limited to the lands *then owned by the Government*; they did not attempt to grant lands previously disposed of, nor to supply the deficiency in one part of the State with lands in another.

It was, and always is, supposed that where the public lands are all entered, the country is settled; and where the country is settled and improved, Government does not design furnishing aid to build railroads. She furnishes aid only to roads through new and sparsely settled portions of the country, where she has public lands, and where business is insufficient to induce the construction of the road.

Again. The odd sections are granted, and the even sections reserved, and to save loss to the Government, are to be sold at double minimum price. The increase in price is based on the hypothesis, according to the long and well established policy of the Government, that the building of the road will enhance the value of the land; that the purchaser can as well afford to pay $2.50 per acre along the road, as $1.25 without the advantage of the road; and that she can as readily dispose of the lands at the enhanced price, on account of the additional inducements and advantages occasioned by the road.

This is the reason of the restriction that the "*land shall* *be disposed of only as the work progresses,*" and not more than twenty miles in advance.

Thus the land disposed of is to be confined to limits supposed to be affected by the completed road. The construction contended for by the appellant ignores this principle entirely. What benefit does the Missouri slope derive from a railroad east of the Des Moines river? What effect has the road on the value of these lands 200 miles from its western terminus?

How unjust would it be to take the lands in Fremont county, which has not been benefitted one farthing by the road, to pay for building the road in a remote section, where alone they enjoy the benefits! How unreasonable to require us in Fremont and Mills counties, to pay $2.50 instead of $1.25 per acre for land, because, forsooth, they have a railroad in Des Moines and Henry!

It cannot be presumed that Congress intended such unjust consequences, even if the terms of the act were doubtful; but they are not. The necessary restriction to prevent such injustice to the Government and the people of the counties through which the road was to run, and to prevent a disposition of the land before the road is built, are in the act, " to be seen and read of all men."

Senator Crittenden proposed to amend by making the proceeds of the land a common fund, to be equally divided between the four roads, but was induced to withdraw it for the reason that thereby the lands in one part of the State would be used to build roads in another.

Globe, Supra., p. 1172.

The State could not sell, under the grant, lands more than twenty miles in advance of the road, and hence she could not by *grant*, dispose of them beyond that limit. Therefore, this grant amounts only to a contract for the sale of these lands to the Company by the State, and the restrictions on the State's power to sell affects the company's right to take, under the contract. All the conditions and restrictions in the act of Congress attach to the contract, and the company is bound by them. The State could sell only on certain conditions, and to a certain extent. The company can take only to the same extent. They cannot take what the State had no power to sell; and as the State could not sell more than twenty miles in advance, it follows that the appellant cannot take the lands in controversy, 200 miles in advance. In no event can the company acquire right or title to the land more than twenty miles ahead of the completed portion of the road.

(*As bearing on this point, see R. R. Grant, Act of July* 14, 1856, *Rev.* 215. 14 *Iowa*, 162. *B. & M. R. R. Co. vs. Treas'r of Wapello Co.*, 18 *Iowa, and the authorities above quoted and referred to.*)

3. The Railroad Company has totally, and in every particular, failed to comply with the terms and conditions of the grant.

As to the amount of road built, see the depositions of N. Lathrop, Rec. 249 *to* 254; *Dep. N. P. Woods, in the Mills Co. case, No.* 180. *Also, see certificates of Governor and Sec. of State, Rec.* 225–7.

This road was built to, or nearly to, Mount Pleasant, a distance of about twenty-eight miles from Burlington, at the time of the passage of the grant. The line was at that time located to Ottumwa, on the Des Moines river, a distance of about 80 or 90 miles from Burlington. It was completed to that point in 1858, since which time not a mile of road has been built up to the time this case was tried in the Supreme Court of the State. Nothing of any consequencs towards completing the road was done for over eight years, as shown by the testimony, *and known generally* in the State. It is not yet completed to within sixty miles of these lands.

Having thus so utterly failed to comply with the terms of the contract, the appellant has no right to any of these lands.

14 *Iowa*, 162, *supra.*

4. The Railroad Company not only have no ***right*** to the land, but they have no *title*, nor ***evidence of title.***

Neither Congress nor the Interior Department (as before seen) recognize the railroad company as the beneficiary of the grant of 1856. They deal with the State only in adjusting and carrying it out. The certificates claimed as patents give no title to appellant. They are ***made to the State***, and they expressly *except* "*all valid claims.*" This claim of the State under the act of 1850 was, at the very least, a *valid claim*, that ripened into a confirmation by act of Congress of March 3, 1857.

These lands were selected and returned (some of them several years) before the railroad grant was passed, and as we have seen, were not intended to be included within its provisions, or affected by it.

It is claimed that under and by virtue of the act of Aug. 3, 1854, (*Lester's Land Laws*, 236), the lists, or certified copies rather, have vested the title to these lands in the State under the act of 1856, for the benefit of the appellant.

Now, that act expressly provides that such lists or certified copies "shall be regarded as conveying the fee simple title of all the lands embraced in such list ***that are of the character contemplated by such act of Congress, and intended to be granted thereby; but where lands embraced in such lists are not of the character contemplated by such act of Congress, and are not intended to be granted thereby, said lists, so far as these lands are concerned, shall be perfectly null and void, and no right, title, claim, or interest shall be conveyed thereby.***"

These lists, therefore, avail the appellants nothing, for they amount to nothing. If the Railroad Company was entitled to the lands under the act of Congress of 15th May, 1856, they could hold them without the lists, as well as with them. If, on the other hand, *these were not of the character contemplated in the act of May* 15, 1856, *and were not intended to be conveyed thereby*, (*which is the case*), then the lists are *null and void*, and confer *no right*, *title*, *claim*, *or interest whatever in the land.*

5. Nearly all of these lands in controversy have been sold by the county, as authorized by the State laws. The purchasers have paid therefor in good faith, and the county had, in like good faith, expended the money in reclaiming the land. She had expended $50,000 or $75,000 in draining these lands, and had thereby made many of them dry and arable, which before were totally unfit for cultivation. (*See Depositions*, *Rec.* 103–4–5, and 124).

It would be exceedingly inequitable and unjust to take from the county the land thus improved and enhanced in value by her labor and expense, and give them to the railroad company, who have in *every single particular*, failed to comply with the terms of their contract, and have acted in bad faith with the State and her grantees and citizens, and in utter disregard and violation of the rights of the county and her citizens.

Such a conclusion in this case would be fraught with disastrous loss and injury to the county, and ruin to many of her citizens—sweeping from them at a single blow the little patrimony accumulated by years of honest toil and patient suffering amid the inconveniences and privations of pioneer life, and turning them with their dependent families out homeless; and all this to appease this unbounded, and insatiable railroad rapacity.

But surely such a decision cannot be. Whatever be the holding on other points, those who purchased and paid for the lands in good faith, under the circumstances of this case, must be protected in their purchases.

Fletcher vs. Peck, 6 *Cranch*, 132 *to* 137. *United States v. Brooks*, 10 *How*. 460.

IS THE ACT OF THE DEPARTMENT FINAL?

Let us now turn to the main point relied on by the appellant and (without attempting here to answer their argument which I have not yet seen) see if the act of the Commissioner of the General Land Office and Secretary of the Interior, in rejecting the claim of the State to these lands as *swamp* and certifying them to the State *as railroad lands* is final and conclusive.

FIRST:—The Department itself, has never so considered its acts.

The letter of Secretary McClelland, dated Dec. 13, 1855, to the Commissioner, (*Lester* 496,) shows that the approval of land to which prior rights have attached will not be regarded conclusive by the department, but will be set aside where the approval of the lands in controversy is conditional, saving the rights of adverse parties.

These approvals are conditional.

See the letter of Secretary Thomson, of July 22, 1859, to the Commissioner, (*Lester*, 571,) to the same point.

The Commissioner in his public notice of March 18, 1857, (Lester, 549,) and the Secretary of the Interior in his communication of Jan. 8, 1858, (Lester, 558,) recognize the right of parties to resort to the judicial tribunals to have their decisions reviewed.

But it is unnecessary to multiply these references.

SECOND—ADJUDICATED CASES.

Bagnell v. Broderick, 13 *Pet.*, 436, (*p.* 451–57).
Wilcox v. Jackson, 13 *Pet.*, 498, (511).
Elliott v. Piersol, 1 *Pet.*, 328, (340).

Lytle et al. v. State of Ark., 9 *How.*, 315, (333).
Ladigo v. Rowland et al., 2 *How.*, 581, (588–90).
United States v. Percheman, 7 *Pet.*, 51, (59 *to* 78)·
Satterlee v. Matthewson, 2 *Pet.*, 380.
Leissure et al. v. Price, 12 *How.*, 60, (72 *to* 77.
Godfrey v. Beardsley, 2 *McLean*, 412, (419–20).
Arnold v. Grimes et al., 2 *Iowa*, (7 *to* 19).
Page v. Hardin, 8 *B. Monroe*, 648, (652 *et seq.*).
Bryan v. Cattell, 15 *Iowa*, 538, (541–54).
Wolcott v. Des Moines Co., 5 *Wallace*, 681.

These references establish the proposition that the acts of the Department may and will be reviewed by the courts for the protection of private rights, if judicial decisions can establish anything; but there are two other references which if possible, are more conclusive still.

1st. The certificates of the Commissioner certifying the lands for railroad purposes under the act of 1856, are conditional and expressly except all valid claims, in these words: "And they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of the act of the 15th of May, 1856 subject to all its conditions, *and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.*" See appellant's evidence, p. 89. And the approval of the Secretary is in these words: "Approved, *subject to the conditions and rights above mentioned.*" (Record p. 89). All the lists certified under the act of 1856, contain the same exception, and in the very same words, both in the Commissioner's certificate and in the Secretary's approval.

The Commissioner submits the lists for approval on this condition, that valid adverse claims shall not be thereby concluded; and the Secretary approves them on the same condition. All tracts to which valid adverse claims exist, are thus, by the express terms and words of the certificates, excepted and not approved. As to all such, the certificates are void.

Now, if appellant's position be true, the act of the Secretary in setting apart the lands for railroad purposes would extinguish all adverse claims—there could be no such thing as *valid adverse claims.* It would be utter nonsense to make the exception in the approval. It would be folly to talk about "valid claims" if parties cannot resort to the judicial tribunals to establish and enforce them.

Appellant may say that this claim is not a valid one, and therefore is not excepted, and not subject to review by the courts. But if *valid* claims can be presented to the courts in this way, so can invalid ones, for the court must of necessity have the power to ascertain whether the claim be a *valid* claim or not. Hence, it follows, that the act of the Secretary is not final, and that the courts have the power to review it, and ascertain whether the adverse claim is valid, and whether the Secretary acted within the law in rejecting or disregarding it. This is all we contend for on this point, and we think the judicial decisions all go to establish this doctrine.

These certificates are not conclusive on private rights, neither in legal effect, nor by their own terms. The Department does not regard them as conclusive. Claims to particular tracts thus certified, have all the time been, and still are occasionally allowed, and communications from the General Land Office, sent to the State Land Office, ordering such tracts to be stricken from the list.

2d. The Act of Congress of August 3, 1854, which the appellant claims vests the title by means of said certification and approval, and which is referred to by the Commissioner of the General Land Office in his certificates in evidence (Rec. 35 and 60), in these words: "Which said certified transcript has vested the title to said lands, in virtue of the Act of 3d August, 1854, in the said State under the grant of 15th May, 1856," and which is the only Act of Congress providing for passing title by such certification, is as follows:

"*Be it enacted, &c.,*" "That in all cases where lands have been, or shall hereafter be granted by any law of Congress to any one of the several States and Territories; and where said law does not convey the fee-simple title of such lands, or require patents to be issued therefor, the lists of such lands which have been or may hereafter be certified by the Commissioner of the General Land Office, under the seal of said office, either as originals, or copies of the originals or records shall be regarded as conveying the fee-simple of all the lands embraced in such lists *that are of the character contemplated by such Act of Congress, and intended to be granted thereby; but where lands embraced in such lists are not of the character embraced by such Act of Congress, and are not intended to be granted thereby, said lists, so far as these lands are concerned, shall be perfectly null and void, and no right, title, claim, or interest shall be conveyed thereby.*" (Lester's Land Laws, 236).

We italicise a portion of the act, and ask particular attention to it, because it is utterly ignored, both by the Commissioner and appellant's counsel.

It is thus expressly provided in the act, by virtue of which the list are certified, that they shall be null and void as to all lands therein embraced which are not of the character contemplated and intended to be granted by the act of 1856. We say the lands in controversy are not of the character contemplated in said act, and that they were *not intended to be granted thereby*; and that so far as they are concerned the certification and approval is a nulity. Now, to seriously contend, that we cannot go into the judicial tribunals of the country to have this matter tested is absurd. How appellant can claim title by virtue of certified lists issued under this act, and at the same time insist that the act of the department in so certifying is a finalty; that the courts cannot review it, and determine whether he has acted within the law or not, and whether the lands were of the character, and intended to be granted by the act, we cannot comprehend. This act expressly refutes the theory.

It is contended that the first section of the railroad grant gives the Secretary of the Interior jurisdiction to decide this question and make his decision final and conclusive.

We submit, that no such power is given by that or any other section or act; and that his decision is no more conclusive, under said act, than under the pre-emption law, or any other act of Congress directing the duty of the Secretary in regard to land matters.

He acts ministerially, as an officer of the executive branch of the government in making these certified lists, which lists are claimed as patents. Now, of course they are not of greater sancity or force than a *patent* itself, issued by the government, signed by the President himself, under act of Congress; and this Court hold in 2 How., 285, " That the issuing of a patent is a *ministerial act that must be performed according to law;*" and also, " That a patent is utterly void and inoperative, which is issued for land which had been previously patended to another individual." Then, how can land granted as swamp, by the act of 1850, be legally certified or patented as railroad land under the act of 1856?

It is also held that titles derived from the government possess no more sanctity than others, and that her contracts and sales must be judged by the same rules of law.

It is further contended, that at all events there can be no doubt as to the finality and conclusiveness of the Secretary's decisions, so far as concerns lands outside the six mile limits; that the first section of the grant, providing for the selection of the lands, "subject to the approval of the Secretary," gives him this power and exclusive jurisdiction.

Does it give him judicial power? Suppose he should approve lands selected more than fifteen miles from the railroad; would his approval give a good title? Suppose he had approved land previously patented, or land to which the right of pre-emption had attached legally, or land previously granted; would his approval give title? Would not the courts have the right, on proper suit brought, to inquire into his acts and determine whether he had complied with the law? If not—if appellants position be correct—then he could trample under foot private rights, disregard the laws, and set up his own arbitrary individual will and opinion, instead of the solemnly expressed will of Congress, and carry it out as the act of Congress, and there would be no remedy.

The simple statement of the proposition carries with it its own refutation. To make his decision thus final, he must be clothed with *judicial powers* over the subject, which must be expressly given him by the act. Under neither of these grants has he such power. He cannot divest third parties of legal rights, and his acts are valid and binding only so far as they comply with the law; and whether they do, is for the judicial tribunals, and not *him*, to determine.

Having thus presented the points suggesting themselves to me, as necessary for the consideration of the Court, I will close with a brief allusion to the testimony:

APPELLEE'S EVIDENCE.

Appellee put in evidence the following:

1. First list of selections certified from Surv. General *Rec.*, 15 to 25.

2. First list of selections certified from Gen. L. O. *Rec.* 25 to 40.

3. First lists of selections certified from Council Bluffs L. O. *Rec.*, 43 to 52.

4. Second list of selections certified from Surv. General. *Rec.*, 52 to 55.

5. Second list of selections certified from Gen. L. O. *Rec.*, 56 to 62.

6. Second list of selections certified from Council Bluffs L. O. *Rec.*, 65 to 68.

7. List of rejected Swamp Lands in C. B. Dist. *Rec.*, 69 to 78.

8. Commissioner's order to reserve the lands. *Rec.*, 51–2 and 68.

9. Commissioner's letter to Secretary of State. *Rec.*, 98–9.

10. Resolutions of the Board locating the road. *Rec.*, 99.

11. Transcript of the record of the Board. (Case 180). *Rec.*, 107–8.

12. Mr. Henn's letter selecting the land. *Rec.*, 99.

13. Letter from Pres. of the Road, and certificate of Gov. and Sec. of State. *Rec.* 100–1.

14. Depositions. *Rec.*, 203 to 245.

15. The depositions of Frank Street and William Street, taken for plaintiff in the case of Mills county, (No. 180), are to be used in this, as per agreement.

APPELLANT'S EVIDENCE.

The parties agreed (Rec. 11) that any evidence on either side in the case of Mills county may be introduced in this case and considered for what it is worth, subject to objection for irrelevancy or incompetency; also, that the evidence in this case may, if relevant to the issue, be used in that.

Under this agreement everything offered by appellant as testimony in the Mills county case is considered in evidence in this, "to be taken for what it is worth, subject to objection for irrelevancy and incompetency."

Appellant puts thus in evidence the certified lists, copies of which are attached to the answer as exhibits, of which we have already spoken; also, a list (marked No. 2) containing the swamp land selections which were rejected and the lands certified as railroad lands. This list is from the General Land Office, and includes the lands in controversy, and is the same list of lands put in evidence by Plaintiff (Rec. 69 to 78), certified from the State Land Office.

Appellant also offers as evidence a batch of communication, marked No. 1, a part of which are entirely irrelevant and incompetent, and should have no weight whatever as testimony, and the others have very little, if any, bearing on the case, even if they can be considered as evidence at all. They are as follows:—(Rec., case 180.)

1. *Instructions for conducting cases where individuals claimed as dry, land selected as swamp.*

This communication of the Commissioner will be found in Lester's Land Laws, 545, (No. 576), and has before been referred to. It strengthens our argument more than appellant's title. *Rec.*, 127.

2. *A copy of a* PUBLIC NOTICE, *issued Dec.* 21, 1855, (before the passage of the railroad grant) by the Commissioner, relative to the same subject, to-wit: Contesting the swamp claim by *individuals*. This notice is found in Lester's Laws, 544, (No. 575), and like the communication of Feb. 11, 1856, only serves to sustain appellee's argument on this point.

3. *Letter of July* 15, 1859, *from the Commissioner to*

the Secretary, relative to these contests. This is rather a peculiar communication, and fully sustains the charge that the General Land Office favors railroads, rather than private citizens. The Commissioner, in this letter, admits that the act of 3d March, 1857, cut off these contests, and commanded the land to be patented as swamp, but asks for liberty to consider the testimony offered by these individual contestants, as evidence to sustain the railroad claim. The Department held that the law of Congress came in and cut off these contests by confirming the swamp selections, and ordering the land to be patented. If so of individual claimants, why not as to the railroads? And after the testimony was rendered nugatory by the act, what right had the Commissioner to use it for any other purpose? If it was illegal to use it to show the land dry for the benefit of the individual offering it, how could it be used to prove the same fact for the benefit of the railroads? Nothing but an overweening desire to serve that interest could have suggested such an idea. *Rec.*, 131.

4. *The Secretary's decision of July* 23, 1859, (Lester, 570, No. 602), which, like his decision of February 8, 1860, holds that if the right under the railroad grant had not vested prior to March 3, 1857, the lands must be patented as swamp, but if it had, then the Commissioner may look into the character of the land. This principle carried out, gives, as before seen, all these lands to the appellee, and appellant's claim derives no strength from the last source. *Rec.*, 132–3.

5. *Secretary's decision of Feb.* 8, 1860, before referred to. *Rec.*, 133.

6. *Another decision of same date*, but not in any degree affecting this case. *Rec.* 135.

7. *A list and classification of the lands claimed by the railroad which were selected as swamp*, by Mr. Steiger. *Rec.*, 136 to 145.

This Mr. Steiger is the Attorney of the B. & M. R. R. Co., and the M. & M. R. R. Co., also, at Washington, and no doubt the Department has been influenced in its decision of this matter by his persistent importunity. In fact, he seems to have procured the position of *referee* of this matter, and goes into an examination and classification of the lands, and makes his decision, and the Commissioner decides accordingly.

This list and classification of Mr. Steiger may be correct according to the field notes, but is very far from the actual fact, as proven by witnesses who have been acquainted with the land for eighteen or twenty years. A comparison of this list with the testimony of the witnesses who are acquainted with the land, will at once show that he knew nothing about the real character of the land. He designates as good land, and fit for cultivation, tracts covered with reeds and cane grass, the unmistakable proof of mirey land, and also lakes and ponds! His testimony is contradicted by from one to ten witnesses on nearly every tract. But we object to this list and all the letters of Mr. Steiger being considered as evidence, because they are incompetent testimony. If the Commissioner did consider them, I know of no rule of law authorizing the admission of the Attorney's letters, written in the interest of his client, to prove his client's title! If Mr. Steiger's testimony was desired, they could have taken his deposition.

I object to the consideration of his letters and lists as evidence; and as by the agreement these papers are offered subject to objections for irrelevancy and incompetency, I ask the court to reject them. This classification of Mr. Steiger's was reported Sept. 7, 1861. On 25th of October following the swamp claim was rejected.

8. *Secretary's decision of March* 4, 1862, directing the certification of the land under the railroad grant. (*Rec.*, 145). This decision was given in view of the fact that the

Commissioner had already determined that the land was not swamp, and on the assumption that that decision was acquiesced in by all parties as correct.

No doubt the decision, whether right or wrong, exhausts the power of the department, and it can do nothing but carry out that decision and let the aggrieved party resort to the courts for redress. This decision sustains the action of the Commissioner, but contains no authority for the rejection of the swamp claim, because that was done in October, 1861, and under, as the Commissioner claims, the decision of Feb. 8, 1860. This is the only decision sustaining that act, and the Secretary in doing it ignored the act of March 3, 1857, entirely.

9. *A letter from Mr. Steiger*, urging the certification of the lands for railroad purposes. (*Rec.* 146).

10. *A letter of the same purport, from General Dix. President of the M. & M. and the B. & M. railroads. Rec.*, 148.

11. *Letters between Mr. Steiger and the Commissioner. Rec.*, 149.

12. *A letter from the Commissioner to the Governor. Rec.*, 149.

Appellee objects to these several communications, and asks the Court not to consider them as evidence, because they are irrelevant, incompetent, and wholly inadmissable.

It is worthy of remark, however, that Mr. Steiger, in his letter of Jan. 10, 1862, urging the certification, admits that the lists will be "no more than blank paper" to the Railroad company, unless they really have the legal right to the land.

The letter of General Dix also urges the certification, "and thus leave," he says, "fancied rights to be settled, if need be, outside of the Departments, where, it seems to me, they rightfully belong;" thus sustaining our position, that if wrong, the action of the Department may be set aside by the Court, and the adverse claim sustained.

It is unnecessary to say anything as to the correspondence or communications numbered from 1 to 14 (case 180. Rec. 101 to 107), for it amounts to nothing as evidence in this case. (Part of it relates to another road).

I respectfully submit that there is no evidence in this case sustaining appellant's right to the land or showing that the action of the Commissioner was right—no evidence even tending to prove such a proposition, much less to rebut the overwhelming proof of the appellee; that the evidence as well as the law is with the appellee in every view of the case, and abundantly sustains the decision of the State courts.

The opinion of the Supreme Court of the State is printed with the record in case 180.

J. A. HARVEY,
FOR APPELLEE.

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~~[illegible]~~

Commissioner's Letter holding the Act of Sept. 28, 1850, *a Present Grant.*

General Land Office, *October* 11, 1861.

Hon. Caleb B. Smith, *Secretary of the Interior:*

Sir: The claims under the swamp grants of 1849 and 1850, have now reached in round numbers, nearly sixty millions acres, and as claims are still coming before us for such lands "*in place,*" as well as for indemnity where sold or located by the United States, we have had the matter under examination, with a view to determine whether the existing rules, resting upon practice established under the direction of your predecessors, are sufficiently effective to secure the ends of justice.

The following are the laws relating to the swamp grant:

1st. The Act of March 2d, 1849.

2d. The Act of September 28th, 1850.

3d. The Act of March 2d, 1855.

4th. The renewed indemnity and confirmatory Act of March 3d, 1857.

5th. The Act of March 12th, 1860, limiting selections to lands not disposed of by the Government, and restricting the period in which selections are admissible.

The original construction given to the swamp grant by this office, was under date of September 30th, 1851, in a letter addressed to the Secretary of the Interior, in which it was held as follows: "In view of the large amount of money and land involved in these applications, and others of like character that will be made by other States interested in this grant, I have carefully examined the subject, and am of the opinion, that these grants must be regarded as taking effect from the dates when the selections are reported to the proper officers and approved—and not from the date of the law. The act of 1849 states expressly, as you will perceive by the words underscored, that on the approval of the Secretary, the fee simple shall vest in the

State; and the act of 1850 makes the fee to vest in the State on the issuing of the patent. The earliest period then, that this grant can be considered as attaching to the land, is that when the selections are made known as aforesaid and approved."

This was affirmed on the 2d October, 1851, by Secretary Stuart.

Subsequently, however, under date of 23d December, 1851, the same functionary reversed his first ruling, and held the swamp a grant "*in presenti.*"

The effect of this reversal and decision was to treat this grant, necessarily indefinite until rendered certain by actual selection, as an effective, operative present title. The ordinary system of selling and locating lands, was of course, in full operation, sweeping over the public domain; and, under that system, individuals not discriminating, and the local officers not having the data in the absence of selections to discriminate, it followed that thousands of sales and locations were made, which afterwards, agents representing the Swamp States, claimed to be swamp lands of prior date, and State property in virtue of the assumed *present* grant, by the Acts of 1849 and 1850 to those States.

The result was that the General Government was forced, either to annul all such sales and locations, or to legislate a direct reversal of said decisions, or provide other means of relief. Hence the Indemnity Act of March 2, 1855, was determined upon as the proper remedy; although prior to its passage many such sales and locations had fallen to the ground.

The effect of this Act of 1855 was a general confirmation of all sales prior to its passage, and grant of indemnity to the States, in *cash* for the amount of such sales, and in *other lands* for the area covered by locations. Even prior to the passage of this Act of 1855, numerous individual applications reached this office, denying, in specified cases, that the lands which had been selected as swamp were really such, and offering to prove it; and in the progress of events, such contesting applications, under oath, reached by estimate three millions of acres. So accordingly investigations were ordered, the papers coming in by bushels; numerous selections were proven to be dry land and canceled. Pending these proceedings, Congress intervened, by the said Act of 3d March, 1857, qualifiedly affirming all past swamp selections, and continuing indemnity to the States on account of prior sales, &c.; finally, however, followed by said Act of March 12, 1860, forbidding the swamp grant from taking hold of any sold or located lands, and virtually affirming the principles of the aforesaid first decision of this office, dated September 30, 1851.

Now we return to the *practice* which has prevailed in respect to the mode of proof of the swampy character of lands. In regard to Michigan and Wisconsin the rule agreed upon by the authorities of those States and the Department has been this, that the descriptive notes connected with the surveys should control. If these notes describe lands as swamp, they were acknowledged as such. If not so described therein, they were not selected or recognized. In the other States the selections were made by State agents and filed in the office of the Surveyor General, where such office existed, and where not, with the Register and Receiver, accompanied by affidavits in accordance with the circular, * * dated November 21, 1850. In the progress of this business, it became apparent that great abuse had arisen in making such selections through individual speculation; first, in the transfer by the States of their interest to counties, thence to individuals who procure and file *ex parte* proof. The proceedings of the Department show efforts to correct the same by more stringent regulations in that respect. The Act of March 3, 1857, withdrew, however, to a certain extent, a large class of selected lands from executive investigation, closing down upon the matter by a qualified recognition of the swamp selections prior to that time. This office, however, exerted its power, to the extent of its subordinate ability, in subjecting such selections to as severe a scrutiny as the printed regulations allowed; and in furtherance of this object, laid down the stringent principles dated January 6, 1860. To this, the late Secretary of the Interior replied September 15, 1860, holding as follows: "The principal point is this: Your instructions seem to have been framed upon that construction of the Act of September 28, 1850, which regards that law as granting only such lands as were both swamp and overflowed, and by the overflow rendered unfit for cultivation. It would appear to be a consequence, that such lands could only be found in the vicinity of large streams, liable to long continued overflow, at seasons of the year rendering the overflowed land unfit for cultivation. This view I do not regard as just and liberal. Whilst that may have been the original and restricted aim of many friends of that law, who regarded it, after its passage, as so restricted in its effects, there were others who have always regarded that statute as granting all lands, of which the greater part of any forty-acre sub-division in its natural state, was wet and unfit for cultivation, either by reason of swamp or of the overflow of streams, and to reclaim which to cultivation the construction of levees or drains would be necessary. Either one of these causes singly, or both of them conspiring together to render lands wet and unfit for cultivation, in my opinion, brings the lands within the terms of the grant, and hence, there may have been prairie swamp lands granted by the law, as well as low, overflowed bottom lands. Such was the construction placed upon that law immediately after its passage, and under that construction it has been, I believe, thus far administered and for this reason, if I regarded your views on this point as correct, I should not be willing to change the construction in that respect after such lapse of time."

The practice which has since followed these instructions, in my judgment, should be amended by the adoption of further means, in order to place the character of all such selections beyond question or controversy. It is estimated that the quantity of land for which indemnity will be claimed in cash or other lands, will reach to 6,692,277.66 acres. Surely such immense interests should be subjected to the severest scrutiny. The States, as grantees, would not desire that their agents or assignees, under color of grant, should succeed in claims not clearly allowable by said grant. The United States, as grantor, has a right to demand at our hands the utmost vigilance and scrutiny, now pressed in these times of trial, as the Government is by other obligations, to the end that not a dollar should be paid, nor an acre granted, not clearly shown to be a legal and just obligation.

To this end, therefore, I recommend the adoption of, and a strict adherence to, the principles laid down in a letter from this office, of July 2, 1860, and where any case comes before the Department, that it be brought to the test of these principles.

In connection with the foregoing, I now submit a report, No. 13,392, on a claim of the State of Iowa, for refunding $6,006.93 on account of lands claimed in said State as swamp, which have been sold by the United States as dry lands. The proof, in printed form, has been produced in support of this claim, under the old ruling and practice of the Department. * * * If the old rule prevails, the account should be approved; but if not, it should be subjected to the principles of the instructions of July 2, 1860, which is recommended. It is suggested, if it shall be deemed necessary to clear the claim of all doubt, that this office have the power to remand the list, with orders for a special field examination, the expense to be paid out of the fund applicable to incidental expenses of district land officers.

With great respect, your obedient servant,

J. M. EDMUNDS, *Commissioner.*

In the Supreme Court of Iowa.

FREMONT COUNTY
vs.
THE BUR. & MO. R. R. CO.,
AND
MILLS COUNTY
vs.
THE BUR. & MO. R. R. CO.

In Chancery.

CONCLUDING ARGUMENT FOR THE PLAINTIFFS.

We were not furnished with copies of Mr. Strong's argument, and have not, until now, had the privilege of seeing it. This we regret, as the time we can now spend in concluding the argument in these cases is so limited as to render it impossible for us to do justice to that very elaborate and somewhat peculiar production.

We might, we think, safely rest these causes on the argument already submitted, as the defendant's counsel have failed utterly to refute any material point made therein. The "tripod," as Mr. Strong terms our first proposition, stands as firmly as before it felt the weight of his mighty power.

He labors through the first thirty-two pages of his argument to explain away or refute the authorities cited for Plaintiffs, with what success we leave for the Court to determine.

Having treated of these references once, we will not trouble ourselves nor weary the Court by a review of them; but respectfully ask the Court to carefully consider them in connection with the propositions they are cited to sustain. We contend that they sustain us fully, on the points and for the purposes cited; and we respectfully submit that, with all their ingenuity, Defendant's counsel have failed to evade or refute them.

Has Mr. Strong succeeded in demolishing the opinions of the learned Attorney General Black, and the authorities on which they are based? If they are a correct exposition of the law, they settle these cases in favor of the Plaintiffs.

Has he shown that in the case of Allison v. Halfacre this Court transcended their duty, or did not understand what they were doing? Or has he proven that in Arnold v. Chapman et al., 2 Iowa, the Court labored through that lengthy opinion to arrive at the conclusion "that if a man purchase of the government a tract of land and pays for it, *therefore the government has sold such tract to him?"* (Strong's argument, 18). Is there no other points decided in that case bearing on the material points in these?

It is there decided that where the government once disposes of land she cannot dispose of it again. Hence, after having granted it by the act of 1850, she could not include it in the grant of 1856, even if she intended to, which, however, she did not.

Again, we see it held, as in *Ware* v. *Brush*, 1 McLean, 536, that the Register in issuing a warrant, and the Commissioner of the General Land Office in issuing a patent, act *ministerially ;* that their duties are *ministerial* and not *judicial*, and that they *can determine no matter which settles the right between the parties ;* for "it would be against all authority and reason to hold that the acts of a ministerial officer can fix absolutely the rights of the parties." And as in 1 McLean, 535, the party having the equitable right will prevail against the holder of the patent.

Again. Quoting *Rogers* v. *Brent*, 5 Gil., 574, the Court says: "If the Commissioner issues a patent to a person not entitled to it, either the State or federal tribunals, may inquire and determine who has the better right." "A title derived from the Government is no better than one derived from an individual owning the fee, and must be adjudged by the same rules of law." (2 *Iowa*, 11.)

Have the principles here laid down and recognized nothing to do with these issues? Nay, but rather this case settles almost every point in favor of these plaintiffs.

Plaintiffs do not, as Defendants assume, claim to have the *legal title*, that is, the patent or other instrument from the General Land Office in its stead, but allege that by virtue of the several Acts referred to, they have become entitled to, and are in equity and in right, the owners of the lands; just as a man who makes a contract for a piece of land and pays his money, but does not receive a conveyance, is the owner, and can enforce his right in equity. But Defendants answer, we cannot be the owners as we have no patents,—that a patent only can pass the title under the act of 1850, and without it, we have no standing in court.

This case says: "A party having the equitable will prevail against the holder of a patent." Then a patent is not necessary to enable us to come into court.

Defendants claim that the Secretary of the Interior has decided this question, and his decision is final—that the court cannot review his decision. We say his decision was erroneous and illegal, and is not final, and that the courts have the power to review it.

What say the court in this case? "The issuing of a patent is a ministerial act, and must be performed according to law. A patent is utterly null and void which is issued for land previously patented," &c., 12. "When a patent has been issued through mistake or fraud, to an individual not entitled to it, a Court of equity will control the right of the patentee, by compelling him to convey to the person who has the better right." "If his title was defective, this defect, under existing laws, could be determined only by the Courts of Justice of the county," 13.

Again: "The Executive Officer of the Government, at length refers the parties to the Judicial tribunals of the country for the determination of their rights." "At about this period, this department adopts the correct view and no longer takes upon itself duties of a judicial nature," 14. Now, if the issuing of a patent, which is so often done after adjusting the rights of contesting claimants, and always after deciding several different questions, is a ministerial act, how can the certifying to a list of lands, or its approval be a judicial act. (It will be observed that it is on this ground, that Defendant claims his action conclusive.)

These lists (of which we will speak further hereafter) are certainly of no more force or sanctity than a patent for the same lands would be, and the issuing of them does not require the exercise of judicial functions to as great an extent as the issuing of patents.

We admit that where an act of Congress constitutes a Board or Officer with judicial powers to determine any specific question, and no appeal is provided for, the decision of such Board or Officer is final if he act within the law. But such is not this case, the Secretary is not clothed with judicial powers. He is simply required to perform a ministerial act, to-wit: to list and certify the lands described in the act. Then according to the above, his action in the premises is not final, but may be reviewed by the courts, which are the proper tribunals for the determination of all such questions. If he has acted illegally, if by mistake, or otherwise, he has certified land under this Act of 1850, or land to which Plaintiffs are entitled under said act, this court has the power, and will secure to the Plaintiffs their rights.

Under the evidence, this decision is of itself, ample authority to sustain Plaintiff's claim to these lands, notwithstanding our distinguished and able friend Judge Rorer, says it is not in point.

As we will again refer to this position of Defendants, that the act of the officer is conclusive, and speak of it more at length, we, for the present leave it, and call attention to the case of *Allison* v. *Halfacre*, 11 Iowa, 450. It is due to the court as well as to ourselves, that we notice the comments of Defendant's counsel on that case. (Mr. Strong's argument, p. 5 and 6.) He intimates that it was gotten up by collusion for the purpose of obtaining a decision on which to base these suits. This insinuation, is not only gratuitous, and uncalled for, but is wholly untrue. When that action was commenced, (in Aug. 1858), the Railroad Company laid no claim to these lands, and it was not known, or expected that they ever would. They had sent their agents to solicit these very lands of the counties, thus recognizing their right to them under the Swamp Grant. *See dep. of N. Lathrop, Rec.* 251–2. That case was begun long before Defendants made any claim to these lands, and before *any lands* were certified on the line of said road.

He also courteously, but nevertheless, very clearly shows that the court did not understand themselves, but proceeded voluntarily to decide a matter they were not called on by the case to do, and that in doing so, they transcended their duty.

If the gentleman desires to instruct the court as to that case, he would do well to look into it himself a little. If he would trouble himself to examine the papers, he will see that the court did understand themselves, while he does not.

The case is not fully stated in the Report, though correctly, so far as it goes.

It was this: One Warden Willis, pre-empted, under State law, a tract of land which had been selected and returned as Swamp Land under the Act of 1850, but which was not approved or patented, and took a certificate thereof from the County Judge. He sold out to Shuble & Gregg, and they to Allison, the Plaintiff, who took an assignment of the certificate. Halfacre, the Defendant, after Willis obtained his certificate, went to the United States Land Office, at Council Bluffs, and filed an affidavit, swearing that the land was not swamp, and claimed the privilege of of pre-empting it there, and under the ruling of the Commissioner of the General Land Office, was allowed to do so. He then claimed title, took possession and exercised ownership, cutting timber, &c. Allison, the holder of the certificate from the County, commenced the suit, to enjoin, and recover damage for the trespass, relying solely upon the Acts of Congress and the State Legislature to sustain his right; for the land, though selected, was not patented.

Halfacre answered, denying that it was swamp land, and setting up his pre-emption at the United States Land Office, and claiming ownership. Plaintiff replied, alledging that his pretended title, if he had any such, from that office, was illegal and void, and asked to have it set aside.

Testimony was taken proving the swampy character of the land, just as in the cases at bar. The dates of all the transactions on both sides are stated in the pleadings, (which are now before me). The case was tried and determined in favor of Plaintiff, the Court finding the facts in the petition alleged, to be true, including the swampy character of the land, thus proven by depositions. Defendant appealed.

It is true the evidence was not sent up. Why? Simply because, as in the cases at bar, Defendant contended that under the swamp grant no title could pass without a patent, and there having been no patent, Plaintiff had no title; and also, that the United States officers having decided the matter, and given Halfacre his pre-emption certificate, the State of Iowa, through her courts, could not interfere; that the matter was altogether under the control of Federal officers, and if the State Courts should review or overrule their action, it would be in violation of the act of admission of Iowa into the Union, which provides that she shall never interfere with the *primary* disposal of the soil, &c.

Relying upon these legal propositions, they insisted that the character of the land was immeterial (as in these cases), and did not have certified up the depositions, all of which related to that point and the damage. The Appellee of course need not bring them. The other facts were all admitted in the pleadings or arguments.

The parties joined issue on these legal propositions, and submitted the case on written arguments, (which are also before me). The defendant's counsel, in a well-studied and closely-written argument of twenty pages, endeavored to establish their position, which, if true, would reverse the case regardless of the evidence of the character of the land. If true, there was no equity in the bill, and it should have been dismissed on Plaintiff's own showing.

The following is an extract from the Plaintiff's argument in that case, which we re-produce here, not only to show that the matter was fully presented to the Court, but also because it is applicable to the case at bar, and answers the arguments of Defendants here:

"In his arguments, Defendant sets out with the question raised in the second paragraph of his assignment of errors, which alleges that the court had no *jurisdiction* of the subject matter involved in this suit. The right to judge of the character of the land as to whether it is *swamp* or *overflowed* land or not, and the validity of a *pre-emption right* as between the United States and a pre-emptor, being *reserved* to the United States and its officers. The State of Iowa, through its officers, cannot interfere with the right of *primary disposal* of the soil.

"The Defendant's counsel say that "the character of the land as to whether it is *swamp* or not, has been treated all through this case as a question of great importance, and the rights of the respective parties seem to be admitted to depend upon the character of this land in this respect.

"They think, however, that this is a mistake, and that the *main question* turns upon the statutes of the United States, and whether they had been complied with so as to vest *any land at all* in the State and county;" and also, "That much depends upon the validity or invalidity of Halfacre's pre-emption right, and that these are questions which *cannot be properly inquired into by the State of Iowa or any of its officers.*

"In support of this position, they refer to the act of Congress entitled, '*An act* supplemental to the act for the admission of Iowa and Florida into the Union,' prohibiting said States from interfering with the *primary disposal of the soil* within their limits.

"We think they misapprehend the case in their application of the law. There is nothing in this case that pro poses to or does in any manner interfere with the *primary disposal* of the soil, nor with any regulation of Congress for securing the title in such soil to the *bona fide* purchaser thereof. Here are two persons claiming title to this land, both derived from the United States—one through the State of Iowa and County of Fremont, the other by preemption from the United States. Now, one of these titles is void; and the question is, *who shall decide which* it is?

"Does the discussion of this question involve an interference with the *primary disposal* of the soil? The soil is already disposed of by the government; she has nothing more to do with it.

"The question, 'which is the *rightful* owner,' is certainly a proper question for the State court's to settle. This same question has already been acted upon by *this court*, in the case of Arnold vs. Grimes, *et al.*, 2d Iowa, page 3. (See authorities there cited).

"The Defendant refers to the Act of Congress of 28th September, 1850, granting swamp and overflowed lands to the States in which they are situated.

"The first section of that Act, says: 'That to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands made unfit thereby for cultivation, which shall *remain unsold at the passage of this Act, shall be, and the same are hereby granted* to the State."

"We think this Act passed to the States, the right to all the swamp and overflowed lands lying in their respective limits, which remained unsold at its passage. It says, they '*shall be, and the same are hereby 'granted* to said State.' (*Meaning* Arkansas.) And the last sections of said Act, extends the same provision, and *grant* to all the other States for the same purpose.

"The first part of the section gives the reason for the *grant.* It is to enable the States to construct the necessary *levees and drains* to *reclaim* the lands. It is not contended, that the States are bound to *reclaim* said lands, in order to get them. The Act does not say :—'If the States will *reclaim* said lands, they may have them,' but it says : '*To enable* the *States to reclaim them,*' the grant is made, and the lands are by said act, *absolutely granted* and given to the States for that purpose.

"The first part of the first section of said Act, gives the reason for the grant; and the second part of said section makes the grant, which is *positive, unequivocal and absolute*—without any conditions whatever. The only question remaining, is in reference to the character of the land. If it was swamp and overflowed so as to render it unfit for cultivation, and had not been disposed of at the time of the grant, it *passed by the act* at the time of its approval.

"The States, in this instance, beforethe issuing of the patents, occupy the same position as the holder of a certificate of purchase from the Government before his patent was issued.

"The *fee simple title* is not *formally* vested in him until his patent is issued; yet the courts hold that the land is his, and that he may control it as effectually before as after the issuing of the patent. So in this case, if the land in controversy was *swamp* or *overflowed lands*, and not disposed of, it passed to the State of Iowa by said *act* of Sept. 28th, 1850, as effectually as if it had been purchased.

"The government by that grant disposed of it, she parted with her right in it, and nothing remained for her to do but to ascertain its description, so that a patent might issue; and for this purpose the second section of said act provides a method by which the lands may be selected and ascertained.

"Now, it is contended by Defendant that this second section goes to the *substance* of the grant, and must be complied with as a condition *precedent.* Here again we think he misapprehends the law. That section is wholly DIRECTORY, and was passed for the purpose of faciliting the selections; and had the *Secretary of the Interior never* complied with his duty as directed by said section, his negligence could in no wise affect the right of the States to those lands. If the construction contended for by Defendant is correct, the negligence or caprice of the officer would nullify the law and destroy the whole *act*, and entirely defeat the grant. It would be as if Congress had said, "If the Secretary of the Interior shall, as soon as practicable, &c., make out accurate lists and plats, &c., and transmit them, &c., *then* the States shall have said lands." Now, this idea is just as reasonable as the position of Defendant, and in fact amounts precisely to the same thing. Congress never intended to rest this whole matter on the will of the Secretary of the Interior, and the law properly understood conveys no such idea.

"Said section only defines the *duty* of the Secretary of the Interior. It first makes it his *duty* to make out plats and lists of the lands, and transmit them to the Governors, and cause patents to issue; and when that was done, then the title was fully vested in the State, (just as any other case when a patent issues). But the United States, from the passage of the act, (or its approval rather), till the issuing of the patent, only *holds the legal title in trust for the States.* See *Arnold v. Grimes et al.*, 2 Iowa, pages 12 and 18, and the cases there cited and authorities quoted. "A *prior donation certificate held priority* over a subsequent *entry patent.*' 1 Pet., 655.

"And the government having granted these lands to the States, she has once disposed of them, and cannot dispose of them again to any one else and make a good title. (See authorities above *cited*).

" The counsel for Defendant state, that if their position is correct, then the several acts of the Legislature disposing of the swamp lands, (and *especially* the one which provides for an agent to select them), are void ; for they say, " that one provides an entirely different method for selecting and designating these lands from that *expressly* provided in the grant itself; and provides to take into the hands of agents of the State the business of selecting, &c.' 'And,' they add, 'these statutes are undoubtedly void, so far as they interfere with the *primary disposal* of the soil, and in the particulars mentioned they do this.'

" Now these statutes do not in any manner interfere with the *primary disposal* of the soil ; and that they are not void is evident from the fact that the *very* act particularly referred to, as being in conflict with the law of the grant and therefore void, is the one under which the swamp lands in this State were selected (by agents appointed under that act), and the selections thus made have been accepted by the United States and patents issued therefor, (at least for a large portion of the State).

"The swamp lands in the States of Illinois, Missouri, and perhaps other States, were selected in the same way, and were likewise accepted by the government and the selections confirmed. Does not this fact show that the second section of the act of Congress of Sept. 28th, 1850, is merely *directory*, and not of the *substance* of the grant?

The counsel for the Defendant say that 'the officers of the United States *finding nothing* to prevent ' the *entry* or pre-emption of the land in controversy,' either in the laws of the United States or in the records of their office, were at liberty to receive his declanatory statement, and could not refuse to do so.' "

" In reply, as to what appeared at the Land office, we refer the court to that part of the Defendant's answer, that states what he done at the Land Office at Council Bluffs, in order to get the land. He alleges that he made due proof 'that said land was not *swamp* or *overflowed* land," and *did not* pass to the State of Iowa, by the Act of Congress, of September 28th, 1850. Why was it necessary for Defendant to prove it dry, and *not swamp* or *overflowed* before he could enter? It was because it was selected and returned as swamp land, and it was known at said office officially, that it was claimed by the county as such. Instructions had also been given to the officers at all the local Land Offices 'that if the applicants for land thus claimed, would prove that it was dry, and not swamp or *overflowed*, they might, notwithstanding the Act of Congress, of Sept. 28th, 1850, still enter or pre-empt it. Hence, the Defendant had to make proof of that fact.. Now does not this show, that if it was in *fact swamp* or *overflowed* land, the Defendant could not legally have entered it. And why? Simply because it passed by the act, and no longer belonged to the United States.

"The Government, through the Land Officers, demanded proof; (after the land had been selected and returned) that it was not of the character to come within the *grant*, that they might not sell or dispose of it the second time. Then if the Defendant, by complying with that requirement, did prove it to be dry land, when in *fact* it *was not*, his evidence was false, and he did as alleged in the Plaintiff's replication procure his title by *fraud and perjury*, his proof, (though, *perhaps* satisfactory to the officers,) could not effect the grant, nor the *real character* of the *land*, and his title thus procured is good for two reasons, to-wit:

1st. "Because the Government had once disposed of the land, and could not again.

2d. "Because he procured his title by fraud and false testimony, (proving it dry, when in fact it was not, &c.,) and the District Court done no more than it had a right to, in deciding this case. It has full jurisdiction to try and determine all such questions.

"Counsel for Defendant, also refer to the Act of Congress, of March 2d, 1855, which act we think confirms the position taken by us. That the land passed by the Act 28th September, 1850, else why would the Government refund to the States the money and warrants with which the swamp lands had been entered ?

"And why recognize the *sales made by* the *States ?* All of which is done in this Act of 3d March, 1855. But they tell us, 'this Act does not apply to the land in controversy,' 'that it was only for those who had made entries, and to whom the States may have sold or disposed of, and does not apply to entries or sales subsequently made.' Now, this Act does not in any manner restrain, nor attempt to prevent the State from further disposing of those lands ; but leaves them as the were before. Indeed, Congress could not control the acts of the States in this particular.

"The land had already vested in the State, and Congress had reserved no right further to control the matter. This act is only remedial to relieve the purchasers of swamp lands from the United States, and in this *very* Act, Congress recognizes the right of the States to the lands by refunding to them the purchase money.

"The Act of 3d March, 1857, was passed to confirm the selections made under the Act of 28th September, 1850, that had then been made and 'reported to the Commissioner of the General Land Office, so far as they remained vacant, &c,' and it confirmed the selections *as made* and reported without regard to the character of the land. This was done to stop a vexatious contest opened up between the General Government and the States by speculators, who claimed that a large amount of lands had been selected as *swamp land which was dry.* The only reservations made, were where 'the land had been *appropriated,* or interfered with by *actual settlement,* under any existing laws of the United States.' Halfacre comes in and claims the land by settlement made prior to said Act, to-wit: in August or September, 1856. The county of Fremont, had on the 11th of April, 1856, granted a certificate of preemption to one Warden Willis, which certificate is now the property of the Plaintiff, and forms the basis of his title in this suit. Some four or five months subsequent to this time, and with full knowledge, both of the character of the land, and of the rights of the Plaintiff, (or those through whom he claims,) Defendant commenced his settlement and improvement on the land, for the specific purpose of wresting from him said land. In order to succeed, he must show before the land office, that it was not swamp or overflowed land, (as stated in his answer). This was necessary, because the officers had been notified that *this land* was claimed by the State as swamp and overflowed. The Defendant had to prove it dry and fit for *cultivation*. Now, on this fact, issue is joined. The Plaintiff, in his replication, alleges that the Defendant obtained his title by *fraud* and *perjury*, and that said land is *swamp* and *overflowed land*, and hence Defendant's title is void.

"But Defendant's counsel contend, that this question cannot be inquired into by the State courts, and cannot be passed upon, but by the officers of the United States, and that THEY are the sole judges of the validity of a *pre-emption* right on the public lands.

"But their position is in conflict with the decision of this court, in Arnold vs. Grimes, and Chapman, 2 Iowa, (above referred to,) which case we think settles this question."

The Plaintiff then proceeds to discuss the other questions—some of *practice* and some of *law*—raised by Defendants, amongst which was the one faintly raised by Defendant's counsel in these cases, that Plaintiff must first establish his right in an action at law." (This question, we think, is raised simply to call attention from the real issue, and we shall not notice it further).

The Court say: "If it should be said that this is a chancery case, and that questions going to the equity of the bill may be insisted upon at the hearing as well as by demurrer, then they should be limited to the facts presented in the petition, and not confounded with those arising upon the evidence."

Now, all the facts necessary for a decision of this question were presented in the petition, and could have been raised by demurrer. The evidence has nothing to do with the legal proposition, as thus presented by the pleadings.

The Court held that it *was proper* for them to pass upon *it*, but perhaps upon no other, for they say: "In the present condition of the record, there is but one question, perhaps, which it would be proper for us to pass upon; and this relates to the alleged invalidity of the acts of the Legislature granting pre-emption rights." "The point made, as we understand it, is that these pre-emption acts were passed anterior to the time when the swamp lands were patented to the State by the general government, and were on that account an unlawful interference with the primary disposal of the soil by the United States." "The objection proceeds upon the idea that the title to these lands is not vested in the State by the act of Congress granting them, but by the subsequent selection and patenting of the same." The Court goes on to say: "This is simply a mistake. The act of granting the swamp lands operates *ex proprio vigore* to pass the title at once. The subsequent selection and patenting is required for the purpose of fixing their location and description." 11 *Iowa*, 451.

Now, we contend that the record was sufficient to justify this decision; that it is right in itself, and properly made; that the Court could not, consistent with their duty, have withheld it; and that the comments of Defendant's counsel in regard to it are entirely unjustifiable.

The Court fully determined, in that case, that the title to all swamp and overflowed land in the State unsold, on the 28th of Sept., 1850, passed by the act of that date to the State, and that a patent is not necessary to convey the title; and they also, of necessity, disposed of that other question so confidently urged by Defendant's counsel in the cases at bar, to-wit: the finality of the acts of the federal land officers. That case, then, is in point, and settles the questions here involved; and we think it cannot reasonably be expected that the Court which rendered the decisions in the cases of *Allison v. Halfacre*, and *Arnold v. Grimes et al.*, could so far change their views of the law as to sustain the claim of Defendant to the lands in controversy, in the case at bar.

Now, let us examine, as an independent proposition, this principal point in the defense: we might say, the *only* point, for all the other positions taken by Defendant's counsel depend upon it, and can no more stand without it than the boughs of a tree can remain erect after the trunk is cut away beneath. It is assumed, and thrust prominently forward all the time. To sustain it, statutes are garbled, decisions misconstrued, and official documents partially and unfairly presented. If they fail to make it good, Defendant's claim to these lands cannot stand for a moment.

Then is the act of the Commissioner of the General Land Office and Secretary of the Interior, in rejecting the claim of the State to these lands as swamp and certifying them to the *State* (not to the Railroad Company, for they have not been certified to them—Gov. Lowe and Gov. Kirkwood both refused to do that with *these swamp lands*), as railroad lands, final and conclusive?

1. We call attention first to the authorities relied on by Defendant's counsel to sustain the proposition.

We are referred to *Campbell v. Doe*, 13 How., 244, (*Rorer* 7, *Strong* 69); but it does not in the slighest degree sustain the proposition.

That case, in brief, is this: The act of Congress of May 20, 1826, granted land for school purposes to townships not previously provided for, such lands "to be selected by the Secretary of the Treasury." Under a circular issued by the Secretary, through the General Land Office, the Register of the Local or District Land Office selected the tract in dispute with others, and returned them to the Secretary for his approval, and the lands were withdrawn and reserved from sale. This tract was properly selected, but others in the list, it appears, were not. Hence the list was returned by the Commissioner of the General Land Office to the Register at the District Office for correction. The Commissioner then, to secure uniformity, issued another circular, by which all such selections were to be governed; and these selections not conforming to this second circular, and the Secretary not yet having acted on them, the Commissioner, without the Secretary's knowledge, authorized the Register to withdraw the lands in said list, and select others in conformity with said circular. The Register withdrew the land, and permitted one Hamilton to enter the tract in controversy.

The Township Trustees objected to this entry, and appealed to the Secretary of the Treasury, insisting on the original selection of this tract, as school land. On this appeal, the Secretary sanctioned and confirmed the original selection, and declared Hamilton's entry invalid.

Plaintiff brought *ejectment*, relying on Hamilton's entry. Defendant claimed the land as school land.

The court say: "The decision must depend on the validity of Hamilton's entry." And they decide "that this tract was legally selected, (though others in the list were not); that Hamilton knew it was selected for school purposes and tried to buy it of the Trustees before he entered it, and that the entry was probably permitted by the Register through inadvertance or mistake; that the Secretary had the power to make the selection, and that his decision declaring Hamilton's entry valid, was, *under the circumstances*, conclusive."

Does that mean that the acts of the Secretary cannot be reviewed by the courts?

Why say "their decision must depend on the validity of Hamilton's entry? Why not say, "the Secretary has passed upon and decided this question, his decision is final, and we have no jurisdiction. We cannot review his decision." Then would they sustain Defendant's position; but now they do not.

Suppose Hamilton's entry had been valid, (as for instance, made before the land was selected as school land), would the Secretary's decision against him be conclusive?

No Lawyer will for a moment so contend.

While the Secretary's decision may be conclusive as against the United States, whose officer he is, and for whom he acts. Yet it cannot, (as the authorities we will hereinafter refer to, will abundantly show), be conclusive as to the rights of third parties. And his decisions, when affecting private rights, will be sustained by the courts, only when they comply with, and are sustained by the law.

This is all that is done in this case. The court say "their decision must depend on the validity of Hamilton's entry." They then decide it invalid, and sustain the decision of the Secretary, and pronounce it conclusive. Why? Because it is right—according to law. Hamilton can have no rights under an illegal entry. But if Hamilton's entry had been shown to have been made before the selection of the land for school purposes, then the court would have declared it valid, and held the acts of the Secretary in selecting the land, and in setting aside the entry illegal and void.

But if Defendant's position be correct, why did the court again say: "If therefore, the quarter section in dispute was legally selected for school purposes, the legal title became vested in the Legislature of Ohio?"

If *legally selected*, the title vested. If *not legally selected*, how then? The title, of course did not vest.

But who is to determine the legality of the selection. Say the Defendant's counsel, "The Secretary is the sole judge." Then he is the sole judge of the validity of his own acts, and responsible to no power; he can disregard private rights; override acts of Congress, and wield the power of a monarch in our republican Government, without any power in the Judicial Department to check or control him.

In that case it would be nonsense to use such a phrase as "if legally selected," for whether *legally* or not, it would be all the same if the decision of the Secretary be conclusive.

The fact that the court place the vesting of the title in the State of Ohio, upon the *legal selecting* of the land, and not on the mere fact that the Secretary had decided the question, is a plain assertion of their power to inquire into and determine the legality of the selection. And therefore, instead of proving the acts of the Secretary final and conclusive, it shows that they will be reviewed by the courts. It shows also, that a patent is not necessary to pass the title, as it passed by the legal *selection*.

It will be borne in mind, that the Act of May 20, 1856, granted so much land "to be selected by the Secretary." Not any particular lands or description of lands—neither numbers or character given—but such as he might select. His selection would designate the land on which the grant would operate, (if subject to the grant; if free from valid claims, &c.,) for the power to select is expressly given to him by the act.

Not so with the swamp land. It is a grant of *all* lands of a particular character, or description. The Secretary is not authorized to select what tracts he pleases, but is required to make out accurate lists of the swamp and overflowed lands, &c. Nor has the Secretary the power to make selections under the Railroad Grant. Hence the cases are not parallel and *Campbell* v *Doe* could not apply, if it did decide the acts of the Secretary in that instance to be final; which, however, it does not.

One other point in that decision we call attention to. The Secretary is the head of the Department, and the Commissioner is his subordinate, and the Court say, "he (the Commissioner) may well be presumed to act under the authority of the Secretary; yet when the Secretary has interposed and decided the matter (as in that case), his decision must be considered as the only one under the law." That is, the Secretary has the right, while a matter is pending before the Commissioner, to step in and take it out of his hands and decide it, and only his decision (not that of the Commissioner) can be considered.

Defendant's position receives no support from this part of the opinion; and we repeat, this case does not, in the slighest degree, sustain their position, but, on the contrary, negatives it, and shows that the courts, even a *State court*, and in an action at *law*, may review the decision of the Secretary, and that we are not estopped from looking into the legality of the selection, &c., of the lands.

(2.) *Maguire v. Taylor*, *et al.*, 1 Black, 195, is referred to, (Rorer 7, Strong 62).

Now, we submit, that this case is not in point, and has no bearing upon any point at issue. It simply determines that the Commissioner, acting under the supervisory control of the Secretary, has the control of *public surveys*, and must judge of their *correctness*, (who denies it?) and he having set aside an *incorrect* survey, and ordered another, the Court would not disturb his action. In this case, however, Chief Justice Taney held that the point in dispute was as to the true location of the land reserved in the deed from Brazeau to Labeaume, depending on the description in the deed, and not on the survey or action of the Land Office, and that that Court had not jurisdiction. (See p. 203).

(3.) *Haydel v. Defresne*, 17 How., 23, (Rorer 7, Strong 63.

This case amounts to the same as *Maguire v. Taylor*, and nothing more.

The act of Congress of Feb. 15, 1811, did not make a *grant*, but simply gave to these proprietors of lands fronting on the river the preference in entering a like amount of adjoining *back* land. But it provided that the surveyor "in all cases where, by reason of bends in the river, lake, creek, bayou, or watercourse bordering on the tract, and of adjacent claims of a similar nature, each claimant cannot obtain a tract equal in quantity to the adjacent tract already owned by him, shall divide the vacant land applicable to that object between the several claimants, in such manner as to him may appear equitable."

Now, the parties in this case were unable to get their full amount of land by reason of the bend in the river, and were allowed to make conditional entries of the amount each claimed, subject to the future survey and division. The surveyor made the division, and the court refuses to disturb it, and did right in doing so, for two reasons:

First. The public surveys were then and are now reduced to a regular system, regulated by law and long established rules of the Department.

The extent of tracts are determined by the straight lines, and they cannot be varied or meandered in different directions. In all dealings with regard to the land, these lines and divisions must be recognized.

Now, this was a part of a *township survey*, and in making the division, the surveyor was bound to recognize the lines and could divide the land between the claimants only in the legal sudivisions.

The principle that Defresne contended for, would authorize us to demand under the swamp grant, every acre of swamp land wherever situate; because the grant is of *all swamp land*. Hence, if there be ten acres of swamp land in the midst of a forty acre tract, the State would be entitled to it. But this is inadmissable, for we are bound by the legal sub divisions, and of the *correctness* of the survey, the department must of necessity have the power to determine.

Secondly. In such case, the Surveyor was required to divide the land between the claimants "in such manner as may seem to him most equitable." Here the *equity* of the matter is submitted expressly to the decision and judgment of the Surveyor. He is required to discharge judicial function, and having done so, his action cannot be assailed, if honestly performed.

But what analogy between that case and the case at bar? The Act of September 28, 1850, grants all swamp and overflowed land, and requires the Secretary to to make out and certify *accurate lists*. The decision as to the character of the land is not conferred on him. The grant is not of "such land as *seems to him* to be swamp and overflowed land." Nor is he required to make out lists of such as seem to him to be swamp." There is no *seemeth to him* about it, but an absolute grant of all land of a certain kind, and he is required to carry out the law by certifying and patenting the lands.

This case of *Haydel* v *Defresne*, does not in the least, militate against our position nor sustain Defendants.

But suppose the Surveyor had in that case divided land between the parties, which was not "vacant," or not "applicable to that object." Would not the courts have power to interfere and to protect the rights of third parties and set aside his division." Could his act in such case be conclusive?

Such a position would be preposterous.

(4.) *Lytle v. Arkansas*, 9 How., 314, (Strong, 54).

This case is one of the authorities selected by us to sustain our view of this question, which it certainly does. Take the extract from the opinion quoted on p. 56 of Mr. Strong's argument: "If, therefore, they acted within their powers, as sanctioned by the Commissioner, *and within the law*, and the decision cannot be impeached on the ground of fraud or unfairness, it must be considered as final." The only change we make from his quotation is to italicize a different set of words.

To make the act final, the officer must keep *within the law* under which he is acting; and whether he did this is a question for the courts. That question is presented in these cases; and we insist that in listing the land he did not keep within the law, but listed and certified land under the act of 1856 which was not subject to that grant, but had been previously granted by the act of Sept. 28, 1850.

The ingenuity of counsel is exhibited in the peculiar manner of his emphasis in this case, but it cannot be forced to sustain his theory.

(5.) *Glen v. United States*, 13 How., 258, (Strong, 57).

There is no trouble in reconciling this case with the others. It does not establish the doctrine advocated by Defendant's counsel. Our government was bound to settle such claims by the same rules that Spain would have done. The *legal* title remained in the crown till the King's Deputy or the Intendant General ratified, or confirmed the claim; "and the same rule has been applied in this country." Our government was bound by the treaty to apply the same rule in such cases; and the rule is right, and is, or should be, applied in all cases of such claims as are here referred to. "*Imperfect* and *unrecognized claims*," the court say, "cannot be recognized in the ordinary judicial tribunals until confirmed by Congress directly, or by special tribunals constituted by Congress for that purpose;" but do they mean such a claim as the plaintiff here presents—a claim which is not only a *claim*, but a *right* granted by act of Congress? Ours is not an *imperfect* and *unrecognized claim*. It is founded in the act of Congress, an *express grant;* and subsequently expressly ratified and confirmed by Congress.

Then it may be recognized by the judicial tribunals. It does not fall within the class of cases the Court were considering. It is not such an *imperfect* and *unrecognized* claim.

As to the subsequent conditions, the decision, as well as Mr. Strong's argument would be very applicable to the railroad grant, but has no reference to rights under th eswamp grant. The railroad grant is a conditional grant, so held repeatedly. It is made on express condition, which they agreed and bound themselves to perform in order to get it, with the right of resumption, and reversion to the Government. Now how, (under the law here contended for), could they have a good title, as they claim, when they have failed utterly to perform these conditions? Not one has been performed as required in all the series of conditions. Perhaps the ingenuous counsel who has such a faculty for construing decisions on the wrong side, to bolster up a bad cause could explain it.

It was held by the Supreme Court of Missouri, in the case of *Dunklin Co., v. District Court, &c.*, 23 Mo., 449, (cited on p. 15, of our former argument), that the swamp grant was an *absolute* (not a conditional) grant, and that the obligation to reclaim the lands, was a trust reposed in the good faith of the State, and not a condition that attached to the land, and whether the land was reclaimed or not, could not affect the title of the States' guarantees.

(See also, *Cooper v. Roberts*, 18 How., 173, therein cited.)

(6.) *The United States v. Wiggins*, 14 Pet., 334, and

(7.) *The United States v. Boisdore, et al.*, 11 How., 63, referred to on page 59, of Mr. Strong's argument, do not establish any principle contrary to that for which we contend. But with the others referred to, they establish the fact, that even these old *imperfect* Spanish claims were rejected by the courts, only where the claimants had lost their rights by some laches. This class of cases however, so dissimilar, are not in point, and can, it seems to us, afford no precedent for the cases at bar. In all such cases the court did entertain jurisdiction, and reviewed the acts of the officer, so far as to see whether they were *within the law.*

(8.) *West v. Cochran*, 17 How., 403, (Strong, 60), does not sustain the Defendant's position, nor justify the conclusions which the learned Attorney draws from it.

Congress has created and confirmed the Plaintiff's *claim* (if we call it a claim simply). We do "rely upon Congress," and admit all in this case decided, as to the power of Congress; but it does not mean that the agency selected has the power to nullify the act of Congress under which he acts. It does not mean that if Congress grants land to a particular person, and orders the Secretary to execute the law by listing and patenting the land to him, that he may list and patent it to some one else, as he has done in these cases.

(9.) *Landes v. Brant*, 10 How., 369, (Strong, 68), is, we think, an unfortunate reference for the Defendant, if the opinion be carefully examined. The counsel, in endeavoring to give that case "*in substance*," has made a very great mistake, and given it altogether a different meaning.

Take his quotation, that "a patent issued to one whose title had been confirmed by a board of commissioners, pursuant to an act of Congress, is conclusive evidence of title—the Commissioner of the General Land Office having approved the action of the board (who acted for him), and granted the patent."

Now, this *board of commissioners* was created by act of Congress, expressly to try and determine these old conflicting Spanish claims, which were constantly being urged upon Congress. Judicial powers were given them. It was "a special tribunal constituted by Congress for that purpose," such as is referred to in *Glen v. United States*, 13 How., 258, and the Commissioner of the General Land Office was not required to *approve* their action at all. The law made it obligatory on him to issue the patent to whomsoever the *board* adjudged to be entitled to it. The *confirmation* and *approval* spoken of, and which is treated as settling the right of the claimant, is the confirmation and approval of the claim by the *board of commissioners*, and not by the Commissioner of the General Land Office. He has nothing to do with the *approval*, nor does the board act for him.

We are unable to find, in the report of this case, any such language as the "*courts cannot question this act of the Commissioner in approving the action of the board*," or any language bearing a similar import. The Commissioner of the General Land Office had nothing to do with the act of the board. He had no power to approve or disapprove it.

But again: this was an action of ejectment, and of course the patent must prevail. Not so, however, in equity always.

We ask particular attention to this decision, and ask the Court to note the limitation and explanation of former decisions regarding this matter (p. 370), and the points really decided in the case.

Even according to counsel's own statement, to be conclusive, the patent must be issued to one whose title has been confirmed *pursuant to an act of Congress.* What if issued in violation of such act?

Nothing in this case militates against Plaintiff's position.

(10.) *Wilcox v. Jackson*, 13 Pet., 511, (Strong, 65), and
(11.) *Bagnell v. Broderick*, ibid 436, (Strong, 68), are also referred to.

All we need say about these cases is, that they are amongst the authorities which we had selected, and which we cite to support our position.

We pass over the reference to the action of the department, and legislative acts, referred to in Mr. Strong's argument, on pages 38 to 54, because an examination of the references (not Mr. Strong's extracts from them,) will enable the court to give them the proper weight, if they have any bearing at all.

We deem it also unnecessary to notice particularly, the second division of Judge Rorer's argument. His attempt to show that Congress, in the Act of September 28, 1850, did not say what they meant; that when they said "the whole of those swamp and overflowed lands, made unfit thereby for cultivation," they meant something else, we think, without intending any disrespect to him, needs no reply.

A single glance at the Act will show his efforts vain; besides that, the regulation requiring the Surveyor to give a description of the land, in this respect, was made after the survey of some of the States interested in the grant.

We can but think it exceedingly unfortunate, however, that when His Excellency, Governor Lowe, was laboring so assiduously about 1858–9, to carry out the legislation of this State, and obtain a settlment and full execution of the grant, he was not advised that all the acts of the State Legislature relating to this subject were *void.* It would have saved him and his successor much labor, as well as the counties and State much expense, and our Judiciary from making numerous decisions based on these *void* acts.

It is indeed, unfortunate that they did not make it known earlier, that the vast amount of labor and expense, suffered in the vain effort to execute these acts of "*impertinent intermeddling*" with the affairs of the Federal Government might have been avoided.

We now call attention to the following authorities, to show that the acts of the department are not final and conclusive, but may be reviewed by the courts, either State or Federal:

FIRST—OF THE DEPARTMENT.

Letter of Secretary McClelland, dated Dec. 13, 1855, *to the Commissioner*, (*Lester*, 496,) shows that the approval of land to which prior rights have attached will not be regarded conclusive by the department, but will be set aside where the approval is conditional. Now, the approval of the lands in controversy is conditional, saving the rights of adverse parties.

See the *letter of Thompson*, of July 22, 1859, to the Commissioner, (*Lester*, 571,) to the same point.

The Commissioner in his public notice of March 18, 1857, (Lester, 549,) and the Secretary of the Interior in his communication of Jan. 8, 1858, (Lester, 558,) recognize the right of parties to resort to the judicial tribunals to have their decisions reviewed.

SECOND—ADJUDICATED CASES.

Bagnell v. Broderick, 13 Pet., 436, (p. 451–57).
Wilcox v. Jackson, 13 Pet., 498, (511).
Elliott v. Piersol, 1 Pet., 328, (340).
Lytle et al. v. State of Arkansas, 9 How., 315, (333).
Ladigo v. Roland et al., 2 How., 581, (588–90).
United States v. Percheman, 7 Pet., 51, (59 to 78).
Satterlee v. Matthewson, 2 Pet., 380.
Leissure et al. v. Price, 12 How., 60, (72 to 77).
Godfrey v. Beardsley, 2 McLean, 412, (419–20).
Arnold v. Grimes et al., 2 Iowa, (7 to 19).
Page v. Hardin, 8 B. Monroe, 648, (652 et seq.)
Bryan v. Cattell, 15 Iowa, 538, (541–54).

These references establish the proposition that the acts of the department may and will be reviewed by the courts for the protection of private rights, if judicial decisions can establish anything; but there are two other references which, if possible, are more conclusive still.

1st. The certificates of the Commissioner certifying the lands for railroad purposes under the act of 1856, are conditional and expressly except all valid claims, in these words: "And they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of the act of the 15th of May, 1856, *subject* to all its conditions, *and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.*" (See Defendant's evidence, p. 197, of record in Fremant County case). And the approval of the Secretary is in these words: "Approved, *subject to the conditions and rights above mentioned.*" All the lists certified under the act of 1856, contain the same exception, and in the very same words, both in the Commissioner's certificate and in the Secretary's approval.

The Commissioner submits the lists for approval on this condition, *that valid adverse claims shall not be thereby concluded;* and the Secretary approves them on the same condition. All tracts to which valid adverse claims exist, are thus, by the express terms and words of the certificates, excepted and not approved. As to all such, the certificates are void.

Now, if Defendant's position be true, the act of the Secretary in setting apart the lands for railroad purposes would extinguish all adverse claims—there could be no such thing as *valid adverse claims.* It would be utter nonsense to make the exception in the approval. It would be folly to talk about "valid claims" if parties cannot resort to the judicial tribunals to establish and enforce them.

Defendants may say that Plaintiff's claim is not a valid one, and therefore is not excepted, and therefore not subject to review by the courts. But if *valid* claims can be presented to the courts in this way, so can invalid ones, for the court must of necessity have the power to ascertain whether the claim be a *valid* claim or not. Hence, it follows, that the act of the Secretary is not final, and that the courts have the power to review it, and ascertain whether the adverse claim is *valid*, and whether the Secretary acted within the law in rejecting or disregarding it. This is all we contend for on this point, and we think the judicial decisions referred to on both sides, all go to establish this doctrine.

These certificates are not conclusive on private rights, neither in legal effect, nor by their own terms. The department does not regard them as conclusive. Claims to particular tracts thus certified, have all the time been, and still are occasionally allowed, and communications from the General Land Office, sent to the State Land Office, ordering such tracts to be stricken from the list.

2d. The Act of Congress of August 3, 1854, which the

Defendant claims vests the title by means of said certification and approval, and which is referred to by the Com'r of the General Land Office in his certificates in evidence (see Rec., 66 and 122), in these words: "Which said certified transcript has vested the title to said lands, *in virtue of the Act of 3d August*, 1854, in the said State under the grant of 15th May, 1856," and which is the only Act of Congress providing for passing title by such certification, is as follows:

"*Be it enacted, &c.,*" "That in all cases where lands have been, or shall hereafter be granted by any law of Congress to any one of the several States and Territories; and where said law does not convey the fee-simple title of such lands, or require patents to be issued therefor, the lists of such lands which have been, or may hereafter be certified by the Commissioner of the General Land Office, under the seal of said office, either as originals, or copies of the originals or records shall be regarded as conveying the fee-simple of all the lands embraced in such lists *that are of the character contemplated by such Act of Congress, and intended to be granted thereby; but where lands embraced in such lists are not of the character embraced by such Act of Congress, and are not intended to be granted thereby, said lists, so far as these lands are concerned, shall be perfectly null and void, and no right, title, claim, or interest shall be conveyed thereby.*" (Lesters' Land Laws, 236.)

We italicize a portion of the act, and ask particular attention to it, because in all their references to it and quotations of it the counsel for defendant keep this part out of sight. In quoting the act in his argument, Mr. Strong (p. 29) is careful to omit the last five lines of the act!

It is thus expressly provided in the act, by virtue of which the list are certified, that they shall be *null* and *void* as to all lands therein embraced which are not of the character contemplated and *intended to be granted* by the act of 1856. We say the lands in controversy are not of the character contemplated in said act, and that they were *not intended to be granted thereby;* and that so far as they are concerned the certification and approval is a nullity. Now, to *seriously* contend, that we cannot go into the judicial tribunals of the country to have this matter tested, is an absurdity that the merest novice in the law could hardly be guilty of. How Defendant can claim title by virtue of certified lists issued under this act, and at the same time insist that the act of the department in so certifying is a finalty; that the courts cannot review it, cannot examine and determine whether he has acted within the law or not, whether the lands were of the character, and such as were intended to be granted by the act, we cannot comprehend.

This act, which is the only one authorizing the issuing of such lists, and which Defendant does and must rely upon, expressly refutes the theory.

If Defendant's counsel had (which, however, they did not,) succeeded in establishing the abstract principle contended for, by the authorities reviewed and cited, still it could not be recognized in these cases, for in those cases the *approvals* or acts of the officer were not made under *this act.* In these cases they are, and are subject to its terms and provisions.

The very peculiar reasons urged by Judge Rorer on p. 8 of his argument in favor of the finalty of the act of the Secretary, amounts to nothing, because there is a way provided for taking all such cases from any and all of the States, to the Supreme Court of the United States, where a construction will be given, binding and uniform in all.

It is contended that the first section of the railroad grant gives the Secretary of the Interior jurisdiction to decide this question and make his decision *final and conclusive.*

We submit, that no such power is given by that or any other section or act; and that his decision is no more conclusive, under said act, than under the pre-emption law, or any other act of Congress directing the duty of the Secretary in regard to land matters.

He acts ministerially, as an officer of the executive branch of the government in making these *certified lists*, which lists are claimed as *patents*. Now, of course they are not of greater sanctity or force than a *patent* itself, issued by the government, signed by the *President himself*, under act of Congress; and this Court hold in *Arnold v. Grimes et al.*, (supra), following 2 How., 285, "That the issuing of a patent is a *ministerial act that must be performed according to law*;" and also, "That a patent is utterly void and inoperative, which is issued for land which had been previously patented to another individual." Then, how can land granted as swamp, by the act of 1850, be legally certified or patented as railroad land under the act of 1856?

This Court also hold, in the same case, that titles derived from the government possess no more sanctity than others, and that her contracts and sales must be judged by the same rules of law.

It is further contended, that at all events there can be no doubt as to the *finality and conclusiveness* of the Secretary's decision, so far as concerns lands outside the six mile limits; that the first section of the grant, providing for the selection of the lands, "*subject to the approval of the Secretary*," gives him this power and exclusive jurisdiction.

Does it give him *judicial power?* Suppose he should approve lands selected more than fifteen miles from the railroad; would his approval give a good title? Suppose he had approved land previously patented, or land which the right of pre-emption had attached legally, or land previously granted; would his approval give title? Would not the courts have the right, on proper suit brought, to inquire into his acts and determine whether he had complied with the law? If not—if Defendant's position be correct—then he could trample under foot private rights, disregard the laws, and set up his own arbitrary individual will and opinion, instead of the solemnly expressed will of Congress, and carry it out as the *act of Congress*, and there would be no remedy!

The simple statement of the proposition carries with it its own refutation. To make his decision thus final, he must be clothed with *judicial powers* over the subject, which must be *expressly* given him by the act. Under neither of these grants has he such power. He cannot divest third parties of legal rights, and his acts are valid and binding only so far as they comply with the law; and whether they do, is for the judicial tribunals, and not him, to determine.

II. *It is claimed that title can pass under the swamp grant only by patent, and that Plaintiffs, not having a patent, have no title.*

If Defendant's principal proposition be correct, this becomes immaterial, and they would hardly indulge in such lengthy and specious arguments to sustain it.

In arguing this point, counsel admit that these are swamp lands, or that they were subject to the act of 1850.

Now, if these lands were granted, or intended to be granted, by the act of 1850, and a patent must be issued before title can pass, then has the Secretary, or rather Commissioner of the General Land Office, thrown himself in the way, and utterly defeated the act, because he refused to issue a patent, although the act makes it his duty to do so. He has defeated the will of Congress, rendered null and void this grant as to these lands, by his own unlawful act, and there is no remedy!

If there is no remedy for such high-handed outrage on the laws of the nation and rights of States and citizens, then let it be no longer said, "There is no wrong without a remedy."

Congress would hardly be guilty of such a blunder as to leave such power in the hands of any officer.

Now, if these are swamp lands, they were intended by Congress to be granted to the State by the Act of September 28, 1850, and were certainly not intended to be granted by the Act of 1856; and under the Act of August 3, 1854, the lists (as before seen) are *null* and *void* as to them. This very Act, which, according to the theory of Defendant's counsel, places it in the power of the Secretary of the Interior to annul the Acts of Congress, declares his acts *utterly null and void*, whenever they do not conform to the Act of Congress.

Although the Act of 1850, provided that a patent shall issue, yet a patent is not necessary to convey the fee, the real right to the land. The fee-simple passed by the grant.

This point is settled by reference in our former arguments, but we again call attention to *Attorney General Black's* opinion, (Lester's Land Laws, 564), and *Allison v. Halfacre*, 11 Iowa, 450, in both of which, it is expressly held and decided that this swamp land grant *of its own force*, passed the title to the State.

We consider this no longer an open question.

GIFT.

III. The very novel position is take nand urged by Defendant's counsel, "That the swamp grant is a *mere gift*, while the grant of 1856, is a grant for a *consideration*, and that the latter can reach over and appropriate land covered by the farmer."

The *one* is no more a *gift* than the *other*. *One* is made to "*enable the State to do*" a certain thing. The *other* to "*aid the State in doing*" a certain thing. But the *one* is an *absolute grant* (*and not a mere promise to give.*) (See Dunklin Co., v. District Court, 23 Mo., 2 Jones, 449, and Cooper v. Howard, 18 How., 173.)

The *other*, a *mere promise to give* on certain conditions to be afterwards complied with, (and which have not, by the way, in a single instance been fulfilled).

The difference is, under the *one*, the *consideration* has been paid in good faith, while under the *latter*, the consideration is, in *every particular*, even those mentioned by Defendant's Attorney, an *utter failure.*

In February, 1851, the State Legislature took action in regard to the land granted by the swamp grant of September previous, thereby accepting the grant, and since that, have continued to legislate and exercise ownership over it as State and county property.

Even a gift cannot be taken back by the doner after it is accepted and taken into the possession by the *donee.*

Again: The expense of surveying and selecting this land is a good consideration. So is the expending of $75,000.00 or $100,000.00 by Plaintiff in reclaiming the lands, the very best of considerations.

Congress could not then, at the time of the passage of the railroad grant, if they had the will, divest the State of her rights under the swamp grant; but they had not the will to act thus inconsistently; and to contend otherwise, as does the defendant, is to accuse Congress of *bad faith*, and of *trifling with the rights of States.*

In his opinion above cited, Judge Black, in passing upon this very question, says: "The subsequent grant by Congress to the State for the use of the railroad, could not have been intended to take away from the State, the rights previously vested in her for other purposes,"--referring to the swamp grant,—and he goes on to say: "We are never to impute such intentions to the legislative department, where any other construction can be given to the words of the Statute."

It was never intended by either Congress or the State, nor was it expected by the Defendant, that the railroad grant should include any lands granted by, or claimed under the swamp land Grant, as we have before seen.

The claim of Defendant to these lands, is an afterthought, and all the efforts of the Commissioner and Secretary to give them the lands, are in direct hostility to the acts of Congress, and in violation of the rights of the State under the prior grant, and of private rights acquired thereunder.

RELATION.

IV. It is further contended, that when the lands were listed and certified, the title vested in the Defendant, and *related back to the passage of the grant of May* 15, 1856.

This is erroneous in two particulars.

In the first place, the title did not vest by reason of said certificate at all, except as to land contemplated and intended to be granted by said act. (See act of Aug. 3, 1854, supra.) No right, title, nor interest whatever was given by said list to any lands that had been otherwise appropriated or disposed of; and these all had been otherwise disposed of.

In the second place, the right and title given by these lists—that is, the title to lands contemplated and intended to be granted by the railroad grant, and which Defendants were legally entitled to have so certified, could *relate back* to the time of the *final location* of the road *only*, and not to the time of the survey of the line, much less to the date of the grant. Section one of the grant provides: "But in case it shall appear that the United States have, when the lines or routes of said roads are *definitely fixed*, sold any sections or parts thereof, granted as aforesaid, or the right of pre-emption has attached to the same," then other lands may be selected to make up the deficit, &c. Then no right under the railroad grant could attach to any particular tracts of land, till the lines were *definitely fixed;* and all legal rights, or rights acquired under other laws, to any of the tracts prior to that time, cannot be disturbed.

The grant thus expressly negatives Defendant's position, and sustains ours.

Before the line of road was definitely fixed, the act of March 3, 1857, was passed, confirming all these lands under the swamp grant, whether they be wet or dry.

If, however, the doctrine of relation applies at all in this case, it applies as well to Plaintiff's claim as to Defendant's, as well under the swamp as under the railroad grant. And then how stands the case?

The swamp grant was passed six years before the railroad grant! The selection of the lands under the former was made years before the definite location of the road, or even the passage of the latter grant; then the confirmatory act of March 3, 1857, was passed before the definite location of the road, and long before the listing and certifying of any of the lands under the latter grant.

The Plaintiff's claim is prior, then, as to the *date of the grant, time of selection, and time of confirmation.* And applying the doctrine of "*relation*," the right perfected by the act of 3d March, 1857, reaches back to the passage of the act of Sept. 28, 1850, and gives the Plaintiff a perfect right from that time, cutting off entirely every possibility of Defendant's acquiring a shadow of right. Ignoring altogether the fact that the act of Sept. 28, 1850, "*proprio vigore*" passed the title, such would be the result of the application of the doctrine of *relation*.

V. Judge Rorer, on page 1 of his argument, claims that the petitions are bad on demurrer, because, he says, we allege *ownership*, which means *legal title*, and if we have the legal title (he says) there is a complete remedy at law; and to support his position refers, amongst other cases, to Allison v. Halfacre, which was just such a case as these, so far as the title of Plaintiff was concerned. Plaintiff's right or title in that case was set up precisely in the same way, to-wit: by setting up the several acts of Congress and the General Assembly, granting the swamp lands to the counties, and alleging them to be swamp, selected and returned accordingly; and claiming that by virtue of *said acts* the land became the property of the counties; that thereby the counties became entitled to them, and are the rightful owners, &c.

We claim *title* through the *grants*. On precisely such a petition in *Allison v. Halfacre*, this Court held that the title was in the Plaintiff. Now, it is perfectly immaterial whether it be a *legal* or *equitable* title; either will maintain these actions, and entitle the Plaintiffs to a decree, as prayed for.

Exception is taken even to the prayer of the petitions, because we do not ask for a conveyance instead of a decree, declaring title in the Plaintiffs. We apprehend it would be difficult to bring these suits in manner and form altogether satisfactory to the Defendant's counsel.

We have the right to ask the Court to decree a conveyance, or to set aside Defendant's claim and declare the title in the Plaintiff; and under the prayer for general relief, the court can render such decree as equity requires.

What we desire is, that it be fairly and fully determined whether the Plaintiffs own these lands, or whether they belong to Defendant; whether they passed to the State under the *swamp grant* or under the *railroad grant*.

We do not wish this object defeated on any technical grounds; and after the assurance of the senior Attorney that the Defandant was equally anxious to have it determined according to the *very right* of the matter, we are surprised to find them making such frivolous, formal and technical objections.

Defendant's counsel contend that because Plaintiffs have sold some of the lands, these actions cannot be maintained. We think otherwise. The counties must make good their title or respond in damages to their purchasers, although they have not conveyed, but only entered into contracts and received a part of the purchase money. The counties have a sufficient interest to maintain these suits.

Actions were commenced by several different purchasers of these lands from Fremont county against the Defendant, and it was requested on behalf of Defendant, that but *one* case be prosecuted to test the rights of the parties, and that the rest be governed by the result, to avoid a multiplicity of suits. Those cases were dismissed, and one suit embracing both sold and unsold land, brought by the county. If the Plaintiff cannot recover as to the lands she has bargained away and sold, simply on that account, then the Defendant will have the privilege they seem to covet, of defending as many actions as there are purchasers.

Plaintiff's testimony is objected to (in the argument only) and it is urged, that oral testimony cannot be admitted to prove the character of the land, because (Mr. Strong says,) men will differ in opinion. This is another unreasonable and untenable position. It can be shown properly and conclusively in no other way. The *field-notes* if introduced, would only be *prima facie*. They are not like a judicial record, a verity. Further, the act itself shows that oral testimony is what was contemplated, and the only testimony that can be relied on to faithfully apply the grant.

The act grants "the whole of these swamp and overflowed lands, *made unfit thereby for cultivation*," to the several States wherein they are situate. Now, the general description given in the field-notes, as every one familiar with public surveys knows, seldom gives the true character of the land, besides the rules are general, and the same in all the States and territories. Congress did not intend to leave it to the decision of the Secretary or to the field-notes, but to get at the very fact, the *real* character of the land by positive testimony.

Lands unfit for cultivation in one State and for crops raised there, may not be unfit in another State and for a different crop. For instance: Such lands as are fit for raising rice in Georgia, would not be fit for raising corn in Iowa, although they are described alike in the survey. In the first section, when Congress said "made unfit thereby for cultivation," they meant *unfit for cultivation for the crops cultivated in Arkansas*, and the same right and privileges are extended to the other States by the 4th section. One State cannot be governed by the crops grown in another. The meagre description of the field-notes cannot be made the test, because it would not comply with the act, and show what land is unfit for cultivation in the *different* States. The same description will not do everywhere, by reason of the diversity of crops, climate, &c.

This is a fact which we have a right to prove by oral testimony, and we have done so by witnesses well acquainted with the land for years.

Again: The regulations requiring the surveyor to give, even as good a description as is now required, is of recent date. Some of the States interested in this grant were surveyed before this regulation was made, and in such, the surveyors noted the rivers, creeks, bayous, and deep sloughs, with the *worst marshes*, but no attention whatever was paid to the particular point, as to whether the land was *fit for cultivation* without resort to artificial means or not. Such was the fact in Illinois, and we think other States, and probably a part or all of Iowa. This fact was in view no doubt, when the Secretary proposed to the States to select by examination in the field, and shows the propriety of such examination, and the injustice and partial application of the grant, if the field notes be conclusive.

Even the form of our interrogatories is objected to, and counsel insist we should have propounded the interrogatories dictated by the Secretary of the Interior!

Now, we had, in our simplicity, supposed that those interrogatories were proposed by the Secretary as a sort of cross-examination where the proof was being taken, *ex parte*, and that although we would be required to conform to them in investigating the matter before his Department, yet when we came into the ordinary judicial tribunals for the trial of an issue, that it would be sufficient to take our proof according to the established rules of legal jurisprudence, and in the manner pointed out by statute; and we are not yet *fully* convinced that the Secretary has the power to prescribe rules for taking evidence in the courts of Iowa!

But there is just as much reason in this position as in his *sneering*, random remarks about the court that tried these cases.

They were tried, not before a *jury*, as he intimates, but before the District Judge sitting in chancery. If they had any just grounds, they should have taken a change of venue, and not come here with contemptible, carping insinuations against the integrity of an able and upright Judge.

Unable to get rid of their testimony, counsel attacks the veracity of the witnesses, and charges them with perjury Now, he knows just as much about *them* as he does about this land, and judges of their integrity by what he knows of men with whom he is more familiar.

We apprehend the evidence of the number of men, well acquainted with this land for years, men *unimpeachable*, who have testified in these cases, will have more force with this Court than the unsupported statements of Mr. Strong, looking, as he does, at these cases through the golden spectacles of the Railroad Company.

Mr. Strong says we should have proven the character of the land before the Secretary, and insists that it was not done because we could not establish the swampy character of the land; hence he concludes they are dry. Now, it would be no more difficult to prove that fact as to these lands, before the department than before a court.

These lands were mostly amongst the first selections, and were not subject to the later and more stringent forms of proof, but fell under the form first agreed upon.

The facts are, the surveyor had sufficient evidence to induce him to decide them to be swampy, and required no more. There was no occasion to produce other testimony, and he gave no opportunity to do so. When the cases were taken up by the Commissioner, he gave no notice, either to the State or Counties. He declined giving an opportunity to put in additional proof, but (perhaps influenced by the ever-present and persistent attention of the Defendant's attorney at Washington,) certified them at once as railroad land. Learning of this result, the Plaintiff (Fremont County) made application, through Hon. Jas. Harlan, then U. S. Senator, setting forth the facts in a petition, and showing that, by means of the county drains and cultivation, many of the lands were becoming dry, and after a few years more it would be impossible to show what its character really was on Sept. 28, 1850, and asking the Secretary to review the case, with leave for the county to furnish additional proof; and if he should decline to do that, then asking him to send a commissioner or agent out here to take the evidence, showing what the character of the land was at the date of the grant, that the testimony might be perpetuated.

The Secretary declined granting the request, on the ground that having once passed on the matter, the *executive* branch of the government had no further control over it, and returned the petition, which we now have (not in evidence, however,) with his endorsements to that effect thereon. We are aware this statement is outside the record, but as the record furnished no limit for Mr. Strong's argument, we apprehend gentlemen will not complain.

A feeble effort is made to avoid the force of our reference to the Congressional Globe, to show the true construction of the railroad grant. We are not aware of any decision of any court forbidding a resort to that source, to get at the real intention of the law makers; and we believe if Mr. Strong had known of any, he would have cited it. It is a source the court has a right to go to, and to give such weight to the information there obtained as they think proper. We know of cases now pending in the United States Supreme Court, in which distinguished Attorneys have made such references. We believe it perfectly legitimate and proper.

Mr. Strong says we cannot resort to Congress, to the men who made the law, to find their intention, and at the same time, volunteers his own testimony, and tells what Congress *knew*, and what Congress *intended*. It is improper to take what Congressmen said in explanation of the act, but it is perfectly legitimate to take what Mr. *Strong says* they meant and knew. Do not let the makers of the law explain it, but let Mr. *Strong* do it for them.

Yet he talks of the *reductio absurdum* of our positions! The counsel strikes another happy thought, "that they might get along faster with the road if they were not troubled too much with suits," (p. 63). That is a rich idea! There is enough involved in these suits to build *less than two miles* of road; and in view of the fact, that the road stood five or six years without advancing one rod, and that too, when no suits were pending, the idea is beautiful.

Close akin to this is another, on p. 97, that Defendants have always recognized the rights of bonafide settlers, and on page 105, that they can adjust all such claims in twenty-four hours; but to see the beauty of this, one must go to the land office at Council Bluffs, and see the piles of papers, in the numerous contested cases between the Defendant and settlers; and pass over the prairies along through those western counties, and see the number of partial improvements abandoned by the poor hard pressd pioneers, simply because they have been ousted, and their claim wrested from them by this same honorable, this same magnanimous Defendant. Yes. If they had the power, no doubt they would, in twenty-four hours settle the rights of all adverse claimants, by at once ejecting them from the land.

We submit, that counsel made quite a blunder in the middle paragraph on page 72. If he means, instead of the act of August, 1854, the act of March 2, 1855, then he misunderstands or misstates our position, (which will be seen on page 17, of argument for Fremont county). Our position is, that Congress by that act recognized the fact, that the title or right had passed to the States *by the swamp grant*, and in order to make good the subsequent sales, they gave indemnity which the States took in lieu of the land, and by that means, enable the Government to make good her title to these purchasers.

The learned counsel commits another very grave mistake, in taking everything ever said by the Commissioner of the General Land Office, or anybody else, about swamp land as applied to this land in controversy.

The *bushels* of affidavits spoken of by the Commissioner to prove the land dry that had been selected as swamp, came from *all the swamp States*, perhaps not *one* of all that number from Mills or Fremont counties—certainly very few, if any; and in swearing to them, the affiants could not have testified otherwise than falsely, to any of the land land in controversy in Fremont county and that part in Mills which has been shown swampy and overflowed; for it *is swamp* and *overflowed land*, and proven beyond all controversy.

Counsel also makes frequent references to, and garbles extracts from the report of the Register of the State Land Office, to prove his positions and show, if possible, a difference between the Report and the positions taken in the argument of these cases, because the Register happens to be one of the attorneys. Without commenting on his motive or object, we have this to say, that by such a course he might prove the Devil a Saint by Holy Writ; and that the present Register of the State Land Office has never spoken a word or written a sentence, either in official report or otherwise, which fairly construed or properly understood, militates in a single particular against the points made and positions taken for the Plaintiff in these cases.

The Register, in that part of his report referred to on p. 51 of Mr. Strong's argument, was trying to show the injustice of the forms prescribed by the Commissioner, after repudiating the forms agreed on with the Governor. These forms and instructions would limit the selection of swamp land to *navigable rivers*, which the Commissioner contended was the true interpretation of the grant. This would limit us principally to lands along the Missouri River. This with the other unreasonable requirements, would greatly diminish the amount of land the State was rightfully entitled to. It was a complaint of the department, and not an admission that the land was not swamp; and he was not speaking of these particular lands any way.

Mr. Strong bases his argument principally upon the *false assumption* that these lands are in fact railroad lands, and that Plaintiffs are attempting to illegally wrest them away; whereas, they are in fact *swamp lands*, granted by the act of 1850, but improperly and illegally certified as railroad land.

Prompted by intense anxiety, the gentleman clothes the Railroad Company with the mantle of *injured innocence*, and pleads its cause with the eloquence of *despair*.

With an over-wrought imagination, he builds *foolish fabrics*, to disappear at his own bidding, and argues from *assumptions utterly false* and *unfounded*, both in *law* and in *fact*.

Failing on every legal proposition to establish the boasted claims of the Defendant, he descends into a species of pettifogging quite unbecoming an attorney of his ability and the magnitude of these causes. (Strong, 104–5).

Callous, indeed, must be the cheek that, unmantled with shame, can, in view of the means resorted to for the last ten years, to influence legislation on this subject, give birth to such utterances.

Whose proud *Presidents* and *paid Attorneys* have thronged the legislative halls, and by means both *fair* and *foul*, sought to control the people's representatives? Who, by stirring appeals and specious arguments before committees, and by considerations, pecuniary, personal and complimentary, with individual members, have labored to forge the laws in moulds cast by railroad interests?

Who is it that, with an arrogance unequalled by any other monopoly on earth, demands that every right shall bow subservient and every interest of man pay tribute to the god of *their* idolatry?

Oh! Shame, where is thy blush? Who ever beheld any of the citizens of Fremont or Mills counties, "infesting the halls of legislation?" Or "laying schemes to rob the State of her patrimony?"

Their interest has been trusted solely to their *legitimate* and Honorable members, who with faithful hands have held the trust, and sought to thwart the *schemes of the soulless speculators who have infested the halls of legislation, to rob the State of this portion of her patrimony, and to defeat the plots of the heartless cormorants, who, with unbounded and insatiable rapacity, are eating up the public domain*, and with golden fingers clutching at the reins of government.

Fremont and Mills counties did not part with these lands to *land-sharks* or *soulless* persons of any kind, but sold them, so far as they have been disposed of, to individuals, nearly all of whom are their own citizens, who purchased or preempted each his forty, eighty, or 160 acres according to his respective convenience or ability.

These good citizens who would not swear falsely for all these lands and the railroad thrown in, and who have been plodding their quiet way along, endeavoring to live honestly, and deal justly, will be surprised to learn that *they* are the "*heartless cormorants*, who are eating up the public domain;" that *they* have been "infesting the halls of legislation;" that *they* have been engaged in "nefarious schemes of peculation and plunder," and that upon *their* souls rests the damning sin of *perjury!*

We hurl back with indignation, the foul imputation, upon those to whom it is applicable, and to whom it belongs. Desperate must be the cause bolstered up by such *landerous falsehoods.*

These lands passed to the State by the swamp grant, and hence to the counties, or were included in act of 1856, and are held in trust by the State for the Railroad Company. If it were not for for Defendant's claim, the title of Plaintiff's would be undisputed. Were it not for Plaintiff's right, the Defendant's claim would doubtless become good, and ripen into title by completion of the road.

The question is, who has the *best right?*

We have not the least shadow of doubt that the Plaintiffs are justly, *legally* and *equitably* entitled to the land, every acre of it; that the decrees of the District Court were correct, and we ask that they be affirmed.

With full confidence in the wisdom and integrity of this Honorable Court, we submit these causes without further comment, only regretting that we have been hurried through this review without time to revise or condense the arguments, so as to present the questions at issue with greater brevity and force.

J. A. HARVEY,
For Fremont County.

WM. HALE,
For Mills County.

DES MOINES, NOV. 24, 1866.

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SUPREME COURT OF IOWA,

JUNE TERM, 1867.

Appeal from Fremont County.

FREMONT COUNTY *vs.* B. & M. R. R. CO. } No. 2,522.

Appeal from Mills County.

MILLS COUNTY *vs.* B. & M. R. R. CO. } No. 2,523.

These cases being identical in principle, and but little variant in their facts, will be jointly considered and determined. They are applications in chancery, in which the plaintiffs set up a paramount claim to certain swamp and overflowed lands therein described; with which it is charged the defendant is unlawfully interfering, and they ask that their title to and enjoyment of the same may be quieted.

This prayer, the court below, on hearing, granted, and the defendant appeals. Other facts, essential to the development and adjudication of the causes, will sufficiently appear in the opinion of the court.

RORER & STRONG,
For Appellant.
HARVEY, EWING & HALE,
For Appellees.

LOWE, *C. J.:*

The lands in controversy have a legislative history, Federal and State, to which it would be well to advert in advance of and as shedding light upon the question of priority raised between the parties.

They both claim the same lands under distinct grants by Congress to the State. The plaintiffs insist that they are swamp and overflowed lands, as they deduce their right to the same through the State under an act of Congress approved Sept. 28, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the 'swamp lands' within their limits." The first section of this act, without reserve or condition, grants to the States all the lands of the description therein specified which shall remain unsold at the passage of the same. The second section declares what must be done by the Secretary of the Interior and the governors of the States in order to vest the legal title of these lands in the several States. The third section lays down a rule to be observed in listing or selecting said lands, namely, that "in all legal sub-divisions, the greater part of which is wet and unfit for cultivation shall be included in said list and plats, but where the greater part of a sub-division is not of that character, the whole of it shall be excluded therefrom."

This act does not point out the particular mode to be followed by the Secretary in making the required lists and plats, nor how he was to obtain the information in order to comply with the rule above prescribed by Congress. It is manifest that this information is not supplied by the field-notes of the original survey. A summary of objects and data required to be noted by the surveyor will be found stated on pages 716, 717 of Lester's Land Laws. Among these, bearing upon the character of the land are 1st, general topography, whether level, rolling, broken or hilly; 2d, the quality of the soil, whether first, second, or third rate; and 3d, whether the bottom lands were wet or dry, and if subject to inundation, to state what depth.

A literal compliance with these directions by the surveyor would fall far short of affording the requisite information to enable the Secretary to determine whether the greater part of a particular 40-acre tract of land was swampy or overflowed in such a sense under the act as rendered the same unfit for cultivation. If he did so from the field-notes, without more information, it would simply be conjectural. Congress thought best in its wisdom to establish the rule above specified as a guide to the Secretary, not limiting him in the sources of his information to the field-notes of the surveyor, but leaving it to his discretion to make the list and plats of these lands under that rule in the best way he could.

It is proper here to state that some time after the passage of the act September 28, 1850, granting swamp lands to the States, some additional objects of topography were required to be observed and stated in the field-notes of the surveyor, in order to define more clearly the quantity and locality of such lands, and to show their distinctive character, whether swampy or otherwise subject to overflow to an extent that, without artificial means, they would be rendered unfit for cultivation; but this was after the lands in controversy had been surveyed. (Lester's Land Laws, 718.)

The manner and basis, therefore, upon which these lists and plats should be made as contemplated by the act were left open to the judgment of the Secretary of the Interior. In November following the passage of the law, J. Butterfield, then the Commissioner of the General Land Office, with the sanction, we are to suppose, of the Secretary, instructed the surveyor general of this State to make out lists of all the lands thus granted to the State under said act, remarking to him that the only reliable data in his possession from which such lists could be made out were the—— notes of the surveyors on file in his office, and that if the authorities of the State are willing to adopt these as the basis of those lists, he might so regard them. If not, and those authorities furnished him satisfactory evidence that any lands are of the character embraced by the grant, you will so report them, and he states what would be sufficient evidence in the premises, namely, the affidavits of county surveyors and other respectable persons that understood and had examined the lines, &c. The Commissioner then states the general principles which should govern the surveyor general in making up these lists, both where the field-notes are the basis of his action, as well as where the State authorities shall conclude to have the surveys made to determine the boundaries of the swamp and overflowed lands, furnishes a form according to which the lists should be made, directing that one copy of the same should be transmitted to the several land officers, and another to the General Land Office at Washington. In the same instructions the Commissioner directs that the lands selected should be reserved from sale, and after the selections should be approved by the Secretary of the Interior, the register should enter all the lands so selected in his tract-book as granted to the State by act of 28th September, 1850, being swamp or overflowed land.

These instructions were continued near ten years, with but little change, for the guidance of the surveyor general and the States in the selection of the swamp lands. For the confirmation of this statement the Secretary of the Interior, R. McClelland, in a letter addressed to the Commissioner of the General Land Office explanatory of the swamp-land act, dated November 20th, 1855, states, "that under it certain instructions were issued for carrying it into effect, embracing substantially these propositions; that where the field-notes of survey indicated the swampy character of the land, they were to be regarded as conclusive of said character, and that where the land is claimed by the State as such, it shall be by selections made by duly authorized agents of the State, and accompanied by their affidavits that they have examined the said lands, and being acquainted with the mode of surveying the public land, that the greater part of each forty-acre tract included in such selections is swampy," &c. (Lester's Land Laws, 521.)

Again, on the 12th of January, 1858, the Secretary of the Interior, J. Thompson, addressed a letter to the Commissioner, Thomas A. Hendricks, inquiring whether in his, the Commissioner's opinion, in bringing to a close the grant of September 28, 1850, in cases of selections reported to his office since the 3d of March, 1857, and in cases where the selections yet remain to be made, the general instructions of November, 1850, were sufficient and should be adhered to, or should new and additional regulations be adopted.

In reply to this inquiry the Commissioner first re-states the substance of those instructions as follows:

"In all cases where the plats and field-notes represent the lands as swampy or subject to such overflow as to render them unfit for cultivation, they belong to the State, and will be so certified.

"Where lands are claimed by the State under this act which are not so represented on the plats and field-notes, you will require the production of satisfactory evidence that the greater part of each forty-acre subdivision of the lands is of the character specified in the act."

He then remarks that this point has always been maintained by this office, and that if any instructions heretofore issued have been otherwise construed, it has been an error.

In reference to the necessity of an examination of the surface of the land in each subdivision, he gave among others as a reason that probably many of the lands were surveyed at dry seasons, and hence their character for swamp or overflowed lands were not indicated by the descriptive notes and plats, &c.

In conclusion he states in answer to the Secretary's inquiry that he could not perceive, in view of the clear and definite character of the instructions, and to which the authorities of the States had made no objection, that any additional instructions or regulations were required.

I have been thus particular in getting at the real character of these instructions, and the length of time they obtained under the authority and with the sanction of the Interior Department, for reasons which will hereafter appear.

As the act granting these lands contained no specific directions to the Secretary as to the means to be employed or the manner in which he should select them, and as the field-notes of the surveys did not contain data sufficiently full to enable him adequately to carry out the rule which the law laid down for their selection, we suppose it was quite competent for the Secretary, through the Commissioner, to adopt the form and mode of selection suggested in the instructions which we have just been considering. Under these the States had the option of adopting one or the other of two methods, either to make the field-notes of the surveys the basis of their selection, or to accept the grant upon the basis of a re-survey and examination of the surface of land, in order to determine with more precision the quantity and boundaries of the swamp and overflowed lands, furnishing the requisite satisfactory evidence of the same. The States of Michigan and Wisconsin adopted the former; this State, with others, elected to take the latter course. (See Act of the General Assembly passed February 2, 1851, Res. 147.)

The act of Congress granting the lands made the Secretary of the Interior the executive officer for carrying the same into effect. In December, 1851, it became necessary for him to determine at what period the grant took effect; whether it was at the date of the law or when the patent issued. In determining this question, he says the granting clause in the first section, namely, the words "are hereby granted," seemed to him to import a grant *in presenti*. They confer the right to the land, though other proceedings were necessary to perfect the title. (Lester's Land Laws, 549.)

This construction of the act by the Secretary, then A. H. H. Stuart, was subsequently confirmed by J. S. Black, Attorney General, in a very clear and able opinion addressed to Jacob Thompson, who was the Secretary of the Interior at the time, founded upon certain judicial authorities, to which reference was made. (Lester, 564.)

It was also confirmed by Congress, as we think we have reason to infer from the character and objects of an act passed March 2, 1855, entitled "An act for the relief of purchasers and locators of swamp and overflowed lands"

The circumstances giving rise to this act are understood to be these: the lands covered by the grant were not and could not be listed at once, and therefore could not be withdrawn from market without at the same time withdrawing the whole mass of public lands; and inasmuch as entries and locations with land warrants of the public domain were made in a large number of instances without examination of the character or quality of the same, and the local officers not having the data, in the absence of selections, to make the proper discrimination, the result was that a very large amount of the swamp lands were disposed of to private parties by the Government at the local land offices.

Now, the effect of all this, under the foregoing decision of the Secretary of the Interior, that the right to these swamp lands vested in the State at the date of the passage of the law, was to render the title of these private entries and locations exceedingly uncertain, if not altogether ineffectual. Hence it was but natural that those holding lands under such titles should feel dissatisfied with their purchases, and seek some kind of relief at the hands of Congress.

On the other hand, when the State, by its agents, come to select and list these lands, it found its right too largely interfered with to allow it to pass without protest, and lodged a complaint against these intermeddlers, and insisted upon the priority of her claim under the law.

The manner in which Congress adjusted this conflict, under the provisions of the act of March 2, 1855, shows quite unmistakably that the construction which Congress entertained of the act granting the swamp lands was accordant with that of the Secretary of the Interior and the Attorney General; otherwise, upon the hypothesis that no right to these lands had vested in the State, could Congress have felt any necessity of extending the relief granted of validating these private entries and directing patents to issue thereon, nor, on the other hand, of granting to the State the indemnity therein afforded, except upon the idea of a previous investiture in her of the title and right to these lands.

We have not thus referred to the construction which Congress, the Attorney General, and the Secretary of the Interior have given to this act, (and we are not advised that any other executive officer of the Government at any time has expressed a contrary opinion,) because we feel it necessary to adopt the same opinion in the disposition of these cases. We expect to place our decision of them on other grounds, and will reserve our opinion as a court upon the proposition whether the act grants a present right or not until the question becomes a vital one in some other cause. It may not be out of place, however, for the writer of this opinion to suggest that after a more careful examination of the question he is confirmed in the opinion expressed on the same subject in the case of *Allison* v. *Halfacre*, (11 Iowa, 450.)

But let it be stated that we have made reference more particularly to the above official, legal, and legislative opinions as constituting a part of the history of the swamp lands, and for the purpose of explaining the conduct of the general assembly of this State in granting the same to the counties where they may be situated, which it did as early as January, 1853, as well as accounting for all the legislation and dealings of the State with these lands, from the time the Secretary of the Interior officially declared the act granting them to be one *in presente*, (*nemine contradicente.*) (Rev., p. 148 to 160 inclusive.)

After this exposition of the effect of the grant, we suppose the State, without provoking unjust criticism, could properly assume the control and ownership of these lands, and deal with them in such way as to obtain the objects contemplated by the act of appropriation, first providing, however, for their selection, and approval thereof by the department to the State.

Now, in the matter of selecting and listing these lands, let us see what the plaintiffs in these cases have done. The evidence shows that in April, 1853, the county judge of Mills county appointed O. N. Tyson, a co-surveyor, the agent to select the swamp lands of that county. The selections were made, and a list thereof returned to the county judge's office on the 31st of December following; the same was duly verified by the affidavit of the selecting agent, to the effect that he understood and had examined the lines bounding the tracts therein designated, and that each quarter section were swamp or overflowed lands, and of the character embraced by the act of Congress approved September 28, 1850. This list was reported to the Secretary of State, and by him on the 1st of February, 1854, duly certified to the surveyor general of this State, who forwarded the same to the General Land Office at Washington on the 20th of September, 1854, with the certificate that he had carefully compared the lists of selections with the field-notes, plats, and other evidences on file in his office; and by the affidavits of the said county surveyor and State locating agent, it appears that the greater part of each smallest legal subdivision of the lands embraced in said list is swampy, or subject to such overflow as to render it unfit for cultivation, and is therefore of the character contemplated by the act of 28th Sept., 1850.

The surveyor general, Warner Lewis, at the same time sent a transcript of this list of swamp lands to the register of the land office (Mr. Street) of the district where the same were situated. About the same time the evidence shows that the register received from the Commissioner of the General Land Office, John Wilson, a letter dated September 30, 1854, directing him, on the receipt from the surveyor general of lists of swamp and overflowed lands, selected for the State of Iowa, in his district, to note each tract therein embraced in its proper place on his tract-books, and not to permit any entries or locations upon any part of the same.

This list includes all the land now in controversy in Mills county. They were selected from actual observation by a county surveyor, and sworn to, reported to the surveyor general, and by him to the General Land Office in the years 1853 and 1854, nearly two years prior to the passage of the railroad grant.

The lands in Fremont county in controversy amount to some $14,255\frac{62}{100}$ acres, and were selected in nearly equal quantities at two different periods, and in the same manner that the selections were made in Mills county.

The first list was made out, authenticated, returned, ratified, and approved, both by the surveyor general and Commissioner of the General Land Office, at Washington, and withdrawn from market at the local land office, all within the year 1854.

The second list of selections was made and duly verified in March, 1856, reported to and fully endorsed by the surveyor general, and by him were forwarded and filed in the General Land Office on the 27th of January, 1857. About the same time they were designated as swamp lands on the tract-books of the local land office at Council Bluffs, and by order of the Commissioner withdrawn from sale.

We are unable to perceive any irregularity or departure from the instructions of the Interior Department for the selection and listing of these lands to which we have above referred. Their very full and emphatic approval by the surveyor general of this State, to whom, under specific instructions, had been intrusted the duty of superintending these selections, and who, after a careful comparison of the same with the data and notes of topography accompanying the original surveys, declared that they were of the character and description of swamp and overflowed lands contemplated in the act of appropriation. This, with their subsequent recognition as such by the Commissioner of the General Land Office and withdrawal from public sale from the tract-books at the local offices would seem ought to settle the regularity and accuracy of the selections, and that they were in accordance with the rules of previous instructions from the department. It is worthy of note that we find no legal testimony in all the papers of these cases impeaching the *bona fides* of the selections involved herein, except the certifications thereof, years afterwards, by the Commissioner to the defendant. The circumstances and ground upon which this was done will appear further on.

The point next to be noticed in order, in the history of these lands, are the difficulties and embarrassments resulting from the action of the Interior Department, in carrying out the provisions of the act March 2, 1855, for the relief of purchasers and locators of swamp lands, according to their understood intent and meaning. A very large number of controversies at once sprung up, which led to great excitement, exasperation and expense, a detailed explanation of which is not now needful, but which terminated on the memorial of the general assembly of this State, and perhaps other States, in the passage by Congress of the act of repose, approved March 3, 1857, to the effect that the selections of swamp and overflowed lands heretofore made and reported to the Commissioner of the General Land Office, so far as the same remain vacant and unappropriated, should be confirmed, approved, and patented to the States, as soon as practicable, agreeably to the provisions of the act granting the same. (Lester, 285.) The circumstances giving rise to the confirmatory act, as well as the obvious import of the language itself, leave no doubt whatever of its meaning and intent, namely, of investing absolutely in the State such lists of swamp and overflowed lands, whether actually so or not, as had before that time been made out and reported to the Commissioner of the General Land Office. And such precisely was the category of the lands now in question; they had not only been listed and reported, but their selection had been made in strict compliance with the rules prescribed by the Interior Department, and all returned approved, and withdrawn from public sale before the act in question was passed. Now, whatever doubts there may exist as to the precise time when the title to these lands vested under the original act granting the same, there cannot be the slightest semblance of a question that the effect of this act was the immediate investiture of the title to all the selections, made and reported at the date of the law, which did not interfere with actual settlements made under other pre-existing laws. And such is the construction which the Secretary of the Interior very properly gave this act again and again. (Lester's Land Laws, 558, 562, 563, 565, 567, 570.) And under that construction very many contests in regard to the real character of these lands, pending at the passage of this act, fell to the ground thereafter, and were no longer the subject of disputation. This act, being mandatory and absolute in its terms, its effect was intended to compose all differences about the character of the selections made and reported, so that the power of the Secretary of the Interior over these questions was exhausted and at an end, and he had left no duty to perform in reference to them, except the mere ministerial duty of furnishing the several governors of the States with a true, certified list thereof from the Commissioner under the seal of his office, (which is all the patent or evidence of title required under another act of Congress, approved August 3, 1854—Lester, 236;) and also the additional duty of determining whether any of these reported selections had been otherwise appropriated or interfered with by legal settlements. Subject to this qualification, the right of the State to demand a certification of these selections cannot be questioned, and it is this right to demand which constitutes the plaintiff's claim, and which, we suppose, in a court of justice, is equivalent to the title, the certified list, when made, only the evidence thereof.

Having traced out the nature and foundation of plaintiffs' right and claim to these lands, let us next see the nature and basis of the defendants' claim to the same lands. Derived as it is from an act of Congress approved May 15, 1856, appropriating lands to the State in alternate sections to aid in the construction of certain lines of railway therein specified, it will not do to overlook the restrictions and reservations which it contains as qualifying the rights of the State under the grant, and the date at which she would take under the same:

First. It reserves from the operation thereof all lands heretofore appropriated for the purpose of aiding any object of internal improvement, or for any other purpose whatever. This reservation is sufficiently broad to except the swamp land grant; besides, we are not at liberty to suppose that Congress would be guilty of the folly of granting the same lands for two distinct objects.

Second. The enacting or granting clause contains this provision: "But in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any sections or any parts thereof, granted as aforesaid, or that the rights of pre-emption have attached to the same, then it shall be lawful for any agent or agents to be appointed by the governor of said State to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of the sections above specified, so much land in alternate sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have attached."

The object of this provision is too clear for misapprehension. It was to keep the grant open so as not to prevent private entries from going on, or other disposition of the same by the Government until the lines of the several railways were definitely established, before which it would be impossible in the nature of things for the right of the State to attach, for the reason the grant is limited to odd sections within a prescribed distance from such line. In the absence of such a restriction the difficulties that arose under the swamp land grant (to relieve against which the act of March 5, 1855, above referred to, was passed by Congress) would have been duplicated; Congress was shut up either to this restriction or the withdrawal of all the public lands in the State from sale for the time being, or otherwise witness a repetition of the conflicts and embarrassments that grew out of the swamp grant for the want of a similar restriction. Now, as entries at large were permitted under the railroad grant up to the time that the lines should be definitely fixed, it would hardly be contended that a party having a pre-emption right, or who should be a purchaser of one of the odd sections, after the date of the grant but within its limits, as subsequently ascertained by a final location of the route, could be divested of his right and title by the superior claim of the railroad company; if not, upon what principle is it that the defendant in these cases claims priority of right over the plaintiffs to the lands in dispute, when the final location of the line of its road was not definitely determined till the 24th of March, 1857, being subsequent to the date of the act of Congress confirming irrevocably the title thereto as swamp lands? There can be but one answer to this worthy of any consideration, which is that inasmuch as the Commissioner of the General Land Office, under the real or supposed authority of the Secretary of the Interior, has certified these lands to the defendant, his action in the premises, whether right or wrong, being political and executive in its character, cannot be reviewed or drawn in question by the courts of the country. This is the principle and certainly the most important point of the defence in these cases. It merits attentive consideration, and should be preceded by a statement of some of the circumstances leading to the certification in question.

First. It will be remembered that as early as 1851, the Secretary of the Interior declared the swamp-land act a present grant; that shortly thereafter the legislature of this State granted these lands to the counties; that Fremont and Mills counties, plaintiffs herein, proceeded to select the same pursuant to instructions emanating from the Interior Department; that these selections were of the character of lands contemplated by the act, as proven in the manner prescribed in the instructions, and certified to by the surveyor general, ratified and approved by the Commissioner, entered as such on the tract-book of the local offices, and withdrawn from public sale. Afterwards, but before the defendant had the route of their road definitely fixed, Congress, by a special act, March 3, 1857, confirmed these selections, and directed that they should be at once certified to the State as swamp lands. The effect of this act, in the opinion of the Secretary, as he frequently expressed it, was to foreclose all questions in regard to the swampy character of these lands, leaving no duty for him to perform in relation thereto, except to determine how far these selections so confirmed were interfered with by the acts of Congress. The Secretary had informed the Commissioner (Lester, 537) that before title to railroad lands would vest the route must be staked off and marked upon the ground, in such manner as to indicate clearly the fixedness of the line; that the mere survey of the line fixes nothing; it is only means of information, not location; he says definitely fixed, implies fixed without capacity of change. Attorney General Cushing, speaking of the Iowa railroad grants, informs the Secretary that whilst they are conditional grants *in presenti*, yet they are in the nature of floats, which do not attach to any particular parcel of the public lands until the necessary determinative lines of railroads shall have been definitely fixed. Now, in this sense, the defendant's line was not permanently established until March 24, 1857, which was posterior to the confirmation of plaintiffs' title by act of Congress. This fact, in both the opinion of the Commissioner of the General Land Office, Mr. Hendricks, and Mr. Thompson, the Secretary of the Interior, as expressed in letters to each other, dated the 2d and 10th of December, 1858, (Lester's Land Laws, 5,667,) established the priority of plaintiff's claim under the confirming act of March 3, 1857; yet, under all these circumstances, and notwithstanding the plaintiffs had in the mean time sold much of these lands, and as the evidence shows had expended many thousand dollars in reclaiming the same, according to the expressed purpose of the grant, Mr. Edwards, a new Commissioner of the General Land Office, on the 25th March, 1862, certifies the lands now in dispute as enuring to the State for the use of the defendants under the railroad grant, May 15, 1856, being some seven or eight years after the same had been selected and approved as swamp lands by his predecessor, and more than five years after they had been confirmed to the State as swamp lands by a special act of Congress. Now, as this act was directly in opposition to the declared views of the former officers of the Interior Department and Land Office, to which we have already referred, and also against the express legal opinion of the Attorney General, Black, (Nov. 10, 1858, Lester, 564,) in which he held, with great show of reason and good sense, that where lands are claimed under a swamp and railroad grant, either of which would be good if the other was out of the way, the elder one must prevent "*prior in tempore potior est in jure.*" It is interesting to learn how this was brought about, and upon what pretence it was done. It will be remembered that soon after the railroad grant was made in 1856, the Interior Department was prevailed upon by parties interested in this grant to suspend the confirmation of swamp land selections, until an adjustment could be made of the rights of the parties under the two grants. For four years, therefore, the Commissioner and Secretary failed to reject any portion of these selections on the one hand, or to certify the same to the State for the benefit of the railway companies on the other. In the meantime, however, they settled questions of conflict between the two grants arising in this and other States, and adopted rules for executing the same, under which they never could have done so without a change of opinion as to the construction of these acts, as we have heretofore shown. After they retired from office, and were succeeded by Mr. Smith as Secretary, and Edmunds as Commissioner, the agents of defendant, Gen. Dix, its president, and a Mr. Steiger, its land agent at Washington, renewed the application for the certification of these lands to the defendant, and persistently urged the same until Mr. Edmunds finally complied. But before he could certify he must first reject them from the swamp selections. This he accomplished by passing through the selections and casting out of the lists those tracts in odd sections within the range of the railroad grant which the field-notes of the survey did not indicate to be swamp or overflowed in such manner as to render them unfit for cultivation, thereby overturning and undoing all that the State and counties had done at much expense under a different rule for the selection of these lands, prescribed by his predecessors, and acquiesced in by the department for a series of years. He professes to derive his authority for doing so from a letter of instructions, written by the Secretary of the Interior, dated Feb. 8, 1860. That he failed to apprehend the true import of this letter as applicable to the facts of these cases, there can be but little doubt. A transcript of this letter is in the rec rd; it will not be found in Lester's Land Laws. Conflicts between the swamp and the road grants assumed different phases according to the diverse facts under which they sprung up. The letter in question is general, designed to cover all, and not particular cases, and was extended to lay down rules of adjustment that would meet each class of cases therein specified. The first class and the rule applying thereto is this: that where the lands are claimed under both grants, and the title under the railroad grant had vested after the passage of the confirmatory act of March 3, 1857, as evidenced by a definite location of the line of road, then the title should be completed under the swamp act. The second class is where claim is made under both grants, and the title under the railway grant vested as aforesaid, before the passage of act of March 3, 1857, the rule prescribed in this phase of the conflict of the swamp selections, and the Commissioner was directed to examine these selections in the light of the field-notes of the surveys, and the papers on file and of record, and if the claim under the older grant was satisfactorily established, to affirm the title under the same, otherwise to certify the title under the junior grant. We need not notice the other cases of conflict mentioned in this letter. They refer to selections of swamp land made subsequent to this act of March 3, 1857, and would have no particular pertinency to the cases before us.

Now, the mistake which we think the Commissioner made was in applying the rule of adjustment laid down for settling conflicts in the second class to those of the first class, within which the evidence shows these cases fall. And it may not be out of place to suggest that inasmuch as the act of rejection mentioned was not only without authority, but really at variance with the instructions of the Secretary of the Interior, the same should be treated as a void act. But afterwards he certified these rejected swamp lands to the defendant, and it is said his act in this respect was approved by Secretary Smith. This is true; yet both the certification and approval contained this qualification, that they did so subject to the conditions of the grant and any valid interfering rights which may exist. This reservation would seem to imply hesitation and doubt of the propriety of the act, whilst rights injuriously affected thereby might be in some way redressed. Nevertheless it is now claimed that this act of certification being political and executive in its character, and the final disposition of the soil, concludes all judicial inquiry into any antecedent right or claim which may be set up to the same; that the power to make all needful rules and regulations for the disposition of the public lands under the Constitution belongs to Congress is no longer an open question in this country. Where, within these rules, and not interfering with previously acquired substantial rights, Government officers do dispose of the public domain, the title will not be allowed to be gainsayed or impeached. We do not understand the authorities referred to by the defence to go any further than this.

On the other hand, if a legal or vested right is in any way impaired or violated by an executive officer of the Government, even in the matter of certifying lists of lands previously granted by Congress, we suppose such violation to fall legitimately within the judicial cognizance of the courts, as if the same right had been invaded by an individual or the legislative department of the Government. We take it to be a well-established principle of law that when a party, in the prosecution of a right, does everything which the law requires, and fails to attain his right by the misconduct, negligence, or ignorance, or mistake of a public officer, the law covers and will protect that right. The following are some of the authorities which will support the principle here laid down: Leissure *et al. vs.* Price, 12 How., 60; Little *vs.* The State of Arkansas, 9 How., 315; Ladega *vs.* Rolund *et al.*, 2 How., 581; Bagnal *vs.* Broderick, 13 Pet., 436; Wilcox *vs.* Jackson, 13 Pet., 498. We can add nothing to the force of the facts which we have already detailed, showing that the investiture of the plaintiffs' right to these lands had really taken place anterior to the date when defendant's right attached by virtue of the permanent location of the road line. If anything was left undone by the plaintiffs in selecting and listing these lands, which was required by the act granting them, or by the rules and instructions of the